

June 6, 2012

SUBJECT: Information Technology Division
Inquiry No. Q13-5487FS
Energy Management Center
Request for Proposal

Dear Sir or Madam:

The New York Power Authority (the “Authority”) invites you to submit a proposal for a centralized Energy Management Center (EMC) in order to provide real-time energy management services to its customers. The EMC will serve as a virtual hub for continuous monitoring, analysis, forecasting, and management of facility energy supply, consumption and costs. The EMC will help reduce energy usage and costs overall by improving facility operations and maintenance, identifying cost-effective energy efficiency measures, and potentially reducing peak demand. The EMC will also be used to support NYPA’s Monitoring and Verification (M&V) of capital retrofits as well as to provide additional services to NYPA’s Demand Response (DR) program. The primary location of these services will be at the New York Power Authority’s Headquarters Office located at 123 Main Street, White Plains, New York 10601 and may include multiple site visits to any or all NYPA customer sites within the State of New York

NOTICE TO ALL BIDDERS

BIDDERS ARE HEREBY CAUTIONED TO MAKE USE OF THE NEW YORK POWER AUTHORITY’S WEB SITE AT WWW.NYPA.GOV TO OBTAIN CURRENT AND COMPLETE BID DOCUMENTS, BID ADDENDA, POST-BID ADDENDA AND RELATED NOTICES. PROPOSERS OBTAINING BID DOCUMENTS FROM SOURCES OTHER THAN THE AUTHORITY’S WEB SITE AT WWW.NYPA.GOV DO SO AT THEIR OWN RISK. INCOMPLETE PROPOSAL RESPONSES MAY BE REJECTED BY THE AUTHORITY.

The New York Power Authority invites you to submit a proposal to provide centralized Energy Management Center (EMC) solution.

A description of the required Services is provided and detailed in the Schedule of Services attached hereto.

Proposals must be submitted in triplicate (original and two copies) along with a compact disk (CD) for each set to the address listed below. **Please mark the original.**

New York Power Authority
123 Main Street
White Plains, New York 10601
Attention: Fiona Spencer, Procurement Specialist,
Fiona.Spencer@NYPA.Gov

Proposals shall be delivered to the Authority by hand or mail not later than 4:00pm on **Wednesday, July 3, 2014**. Envelopes containing each set should be clearly marked on the outside that a proposal for Inquiry No. Q13-5487FS is enclosed and showing the Proposer's name, address and agreement title. The outside of the submission shall be marked with large letters **"DO NOT OPEN – SEALED PROPOSAL."** **Emailed or faxed bids will not be accepted.** Any proposals received after this date and time will be time stamped and returned unopened to the Bidder.

Your attention is directed to Appendix "C" entitled Minority and Women-Owned Business Enterprise (M/WBE) Participation Goal Requirement, Appendix "D" entitled SDP 45-01 Background Security Screening for NYPA Consultants, Appendix "E" entitled The Omnibus Procurement Act of 1992 Requirements, Appendix "G" entitled Equal Employment Opportunities Requirements, Appendix "H" entitled Tax Law Requirements, Appendix "I" entitled New York Power Authority (NYPA) North American Electric Reliability Corporation Critical Infrastructure Protection (NERC-CIP) Cyber Security Training Requirements and Appendix "J" entitled Bidder/Proposer Compliance With New York Power Authority Policy Providing For Certain Procurement Disclosures.

If there are any questions regarding this Request For Proposal (hereinafter "RFP") §§ 139-j and 139-k of the State Finance Law (SFL), require that all questions must be directed in writing to Fiona Spencer, Sr. Procurement & SAP Analyst, New York, Power Authority, 123 Main Street, White Plains, New York 10601. Proposers are requested to submit a copy of their annual report with their proposal. All prices quoted shall be in U.S. currency.

All expenses incurred by you in preparation of your proposal will be to your account. The Power Authority will not reimburse any such expenses.

The Power Authority reserves the right to reject any or all proposals.

Please acknowledge receipt of this letter, stating whether or not you intend to submit a proposal by returning the Bid/Inquiry Response Form immediately following this page.

Very truly yours,

Fiona Spencer
Procurement Specialist
New York Power Authority
123 Main Street
White Plains, New York 10601
Phone: (914) 681-6401
Fax: (914) 681-6783
[E-mail: fiona.spencer@nypa.gov](mailto:fiona.spencer@nypa.gov)

NEW YORK POWER AUTHORITY

REQUEST FOR PROPOSAL

FOR

ENERGY MANAGEMENT CENTER (EMC) SOLUTION

INQUIRY NO. Q13-5487FS

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BID/INQUIRY RESPONSE FORM

PLEASE READ AND RETURN IMMEDIATELY



New York Power Authority
123 Main Street
White Plains, New York 10601
Attention: Fiona Spencer

Bid/Inquiry No: Q13-5487FS

Bid Due Date: Wednesday, July 3, 2013

RESPONSE (CHECK One)

- ☐ Yes, we will submit a proposal for the above Bid/Inquiry.
☐ No, we are unable to submit a proposal at this time.

REASON(S) FOR NOT BIDDING (Check all applicable boxes)

- ☐ Not our scope of work.
☐ Present work load too heavy at this time.
☐ Scope of work too small.
☐ Scope of work too large.
☐ Not enough time to bid. How much more time needed? _____
☐ Specification requirements too stringent (Please explain on separate paper).
☐ Commercial requirements too stringent (Please explain on separate paper).
☐ Contract Reporter notification received too late to respond. Date Received _____.
☐ Unable to meet Bond Requirements.
☐ Unable to meet Insurance Requirements.
☐ Unable to submit a competitive bid at this time.
☐ Key personnel unavailable at this time.
☐ Cannot meet Delivery or Schedule Requirements.
☐ Lack of experience.
☐ Other (Please Explain).

IF YOU ARE UNABLE TO SUBMIT A BID, DO YOU WISH TO RECEIVE FUTURE SOLICITATIONS FROM THE NEW YORK POWER AUTHORITY? ☐ YES ☐ NO

Name _____ Company _____
(Please Print)

Date _____ Telephone No. _____

(Mail or Fax this form to FAX No. (914) 681-6783)

INFORMATION FOR PROPOSERS

I. OBJECTIVE

EMC implementation will be coordinated with NYPA's Economic Development and Energy Efficiency Business Unit along with the Information Technology Division and will support the Build Smart NY initiative. The Build Smart NY initiative, housed within NYPA's Economic Development and Energy Efficiency Business Unit, is authorized under New York State (NYS) Executive Order (EO) 88, requiring all state agencies and authorities to reduce their source energy utilization intensity by 20% within seven years.

Eligible customers for the EMC include all public sector customers (of either NYPA's commodity supply or energy efficiency services) and businesses that participate in NYPA's economic development programs. This includes but is not limited to office buildings, university campuses, health facilities (including hospitals), transit facilities, garages and warehouses.

II. PRICING

A completed copy of the Compensation Schedule must be submitted with each copy of the proposal. Pricing will represent Metering Rates, Hourly Billing Rates and estimated Travel and Living Expenses.

Each bidder will provide the following Compensation information:

- Total not-to-exceed cost for the proposal;
- Detailed itemized pricing for each deliverable identified in the Compensation Schedule.
- Detail Additional Consulting expertise and hourly rates you could provide, outside the deliverables of this EMC Solution RFP. Consultant shall not assign personnel with classifications other than those stated below without the express written approval of the Authority
- Travel/living costs for this consulting engagement are to be submitted as a not-to-exceed estimate. It is estimated that this engagement will include multiple visits to each NYPA site which may include overnight. (Travel must be arranged through the Authority's travel department which allows for booking at government rates.)

III. EXAMINATION OF REQUEST FOR PROPOSAL

- A. Proposer shall examine the RFP carefully. Any questions with respect to the RFP, including an interpretation of the RFP or clarification of any ambiguity, inconsistency or error therein, shall be addressed to the Authority in writing, (email inquiries acceptable) to the Authority for response. Such inquiries may be answered in writing by the Authority, as it deems necessary, as an addendum to the RFP, and will be posted on the www.nypa.gov website. Any addendum issued becomes part of the RFP, binding on all Proposers whether or not the Proposer receives or acknowledges actual notice of any such addendum.
- B. Only written interpretation(s) or correction(s) provided in any addendum shall be binding. Proposers are cautioned that no officer, agent or employee of the Authority is authorized otherwise to explain or interpret the RFP, and the Proposer must not rely upon any such explanation or interpretation, if given. The contract as defined in Article 15 of the AGREEMENT shall constitute the entire AGREEMENT between the Proposer and the Authority.

IV. EXPERIENCE

Proposer shall submit a statement describing its experience with previous services similar to the services it proposes to perform, including a description of the facilities and owners where and for whom such services were performed. Proposer shall submit a statement describing its ability to perform the services according to the provisions of this Request For Proposal. Proposer shall also include the following in its proposals:

- A. Resumes** of key personnel to be employed in performing the Services, including Project Manager and “back-up” resource personnel;
- B. References** – At least three (3) references of implementations similar in size and scope to NYPA should be included. References need to specify a contact name, address, and phone number. References should be for both software satisfaction as well as implementation consulting services.
 - 1. Supply at least three references for projects over 200 metered points each, including at least one governmental customer as an example.
 - 2. Describe and provide references for at least one project where the client began their relationship with the vendor in a vendor hosted environment and transitioned this relationship to a client hosted relations as described in this scope of work.
 - 3. Describe and provide a reference for at least one installation over 200 points where your EMC “took over” from a previous vendor without changing the local data collection devices in place with the previous vendor.

C. EMC Experience - Bidder shall describe the most effective way to quickly configure and deploy the EMC and to optimize its benefits for NYPA and its customers. The following are requirements that NYPA is looking for in a Vendor:

- must possess an EMC that is fully developed with a proven record and solid customer base.
- must have extensive experience developing and implementing such EMCs for customers that have large and diverse facility portfolios.
- must have experience deploying EMCs for at least one federal, state, or local governmental customer.
- Is your EMC currently operational and in use at customer sites?
- Provide the total number of metering points your firm currently has under contract, specifying both vendor managed and customer managed.
- Describe the three largest EMC projects you have implemented within the last three years in terms of number of buildings, number of total square feet, and number of meter points.
- must have the ability to safeguard all data passing through the EMC via data encryption or other comparable means.
- must have current experience hosting and managing EMCs on behalf of customers as well as transitioning EMCs to customers for self-management.
- The Vendor's system must be vendor neutral and open source protocol regarding energy measurement tools (i.e., meters, building management systems (BMS), etc.) and local data collection devices, which will communicate with the EMC.

Any vendors that do not meet these minimum requirements will not be considered

D. Minimum Requirements - Complete Bid Addendum#1 (Attachment A – Minimum Requirements Worksheet.)

ADDITIONAL INFORMATION REQUESTED

This RFP contains Objectives that require responses in an essay format. Provide as much detail in your response as you believe to be prudent, but limit your response to each question to one page

A. Services – Bidder should describe the consulting services that you will provide for the assessment and their cost

- B. Methodology** – Bidder should describe any tools and techniques that gather information and perform the assessment including a description of how interviews and/or surveys will be conducted and any specific software used to document process or data flows.
- C. Project Plans** - Bidder shall provide a detailed project plan (in hardcopy and Microsoft Project Plan electronic format) describing the major tasks, task durations, resource requirements, deliverables, and milestones necessary for consulting engagement.
- D. References** - At least two references of assessment consulting services similar in size and scope (preferably for assessments involving utilities in the energy field) should be included. References should contain a contact name, address, and phone number.
- E. Future consulting rates** – Personnel Rates are hereby defined to be the sum of the products obtained from multiplying the appropriate Hourly Rate stated below by the number of hours that such personnel are actually engaged in work pursuant to this Agreement during the month in which the services were rendered.

Please respond to all other questions below in a separate text document. Answer questions in the order listed below, listing each question's number.

F. Local Data Collection

1. Describe the software that will be used for the remote data collection.
2. How will data be transmitted to the central data system (push/pull)?
3. How will you ensure that data security is maintained?
4. How much storage capacity do you recommend for local data collection devices?

G. Central Data System

1. What kind of database will be used?
2. Provide a description and examples of your database organizational structure.
3. What kind of support do you give with meta data management?
4. How do you ensure system security of the central data system and the EMC overall?
5. What provisions are in place for system reliability and resilience?
6. Describe your approach in terms of data validation.
7. How long is data stored in the central data system? How can NYPA access archived data?
What is your system availability?

8. Provide a hard copy of the central data repository data model
9. Define software host service platform and whether the hosting service adheres to open source standards.

H. Analytical and Monitoring Tools

1. Define and specify your reporting platform and methodology.
2. What formats can the system export data to?
3. How can the reports and user profiles be configured? How many report templates and user profiles can be created?
4. How long does it take to create a new non-standard report? Could NYPA create its own?
5. How long does it take to create a new user profile? Could NYPA create its own?
6. Provide representative examples of the chart formats used in your standard reports.

I. Demand Response Tools

1. Submit examples of graphical representations from dashboards.
2. Provide examples of customer notifications
3. How can additional curtailable loads at monitored facilities be identified?

J. General Questions

1. Describe how your EMC offering is superior to those of other competitors.
2. Provide an example of tangible energy reduction accomplishments by a customer using your system within the last two years.
3. Describe your approach to training customers on your analytical tools.
4. Provide a detailed description of requirements for hardware, system software, VM ware, work station requirements, etc.
5. Does your EMC have a module that also provides tenant billing? If so, please describe and provide documentation on this module.
6. The first phase of the project will be to get the NYPA White Plains office connected to the EMC. The White Plains Office is 116,000 square feet and possesses 43 metering points. Provide a detailed implementation timeline to get NYPA's White Plains Office fully connected to the EMC.

- K. Attachments** - Completion of Attachment A in Bid Addendum #1 is required in addition to Appendices A,C,E,G,H, J and Insurance Certificate. .

It is not the intent of the Authority to limit the Bidders to the foregoing topics on this RFP Scope of Services. The Bidder is encouraged to recommend additions to the suggested topics that, in its experience, the Bidder considers being applicable or beneficial to the Authority on its EMC objective. Therefore, the proposal is to specifically identify additional topics recommended to be covered by the consulting assessment, the associated costs and the length of time this engagement is anticipated to take.

V. PROPOSED PROJECT TIME LINE

NYPA seeks to launch the EMC in the fourth quarter of 2013. It will be launched by pulling in the existing metering data from two to three facilities, one of which will be NYPA's White Plains Office. The identities of the remaining facilities will be finalized during the third quarter of 2013.

The EMC project will be expanded during the course of 2014, with a focus on connecting facilities that have metering in place and which are covered by NYS Executive Order 88 (Build Smart NY). It is anticipated that the EMC project could extend to all NYPA customers in 2015. .

VI. PRESENTATIONS

Proposers may be required to provide a presentation. Recommended length of presentation is two (2) hours. The presentation can be in person at NYPA's White Plains office or in can be presented remotely via Webex.

VII. OTHER REQUIREMENTS

- A. The proposal and all supplemental data shall be legible and in the English language. Proposals that do not meet these requirements or that contain omissions, erasures, alterations, additions or items not called for in the RFP or that contain irregularities of any kind, may be rejected as informal.
- B. The names of the president, secretary and treasurer, the date and state of incorporation and principal place of business shall be given on Page B-1 of this RFP.
- C. Payee Identification Numbers. Under the provisions of Chapter 295 of the Laws of 1987, the New York Power Authority is required to report the following information to the New York State Department of Taxation and Finance in connection with your proposal for, or the award of, a contract for these Services.

Your Business Name: _____

Your Business Address: _____

Your Federal Social Security Number: _____

Your Federal Employer Identification Number: _____

If you do not have the above numbers, please state the reason or reasons why: ____

Such numbers shall only be made available to the public as provided by law.

Questions regarding the requirement for payee identification numbers and the maintenance system for such records should be addressed to:

Fiona Spencer
New York Power Authority
123 Main Street
White Plains, New York 10601
Tel: (914) 681 6401
Fiona.Spencer@nypa.gov

- D. Compliance with the Immigration Reform and Control Act (IRCA): It is the Consultant's responsibility to properly complete and retain Form I-9 for all of its employees assigned to perform work as independent contractors at any one of the Authority's facilities, projects, and properties. The Consultant understands, and is in compliance with, its obligations under IRCA. The Consultant warrants that it is not knowingly employing any workers assigned to the Authority who are not authorized to work for the Consultant in the United States. The Consultant agrees to defend and indemnify the Authority for any liability, including attorney's fees, arising out of any claims that the Consultant's employees are not authorized to work in the United States for the Consultant and/or any claims based upon alleged IRCA violations committed by the Consultant.

VIII. EQUAL EMPLOYEE OPPORTUNITIES

Proposer's attention is directed to the Appendix G attachment entitled "Equal Employment Opportunity Requirement". By Submission of its bid proposer agrees, if awarded the Contract, to fully perform all obligations of the Agreement.

IX. DEVIATIONS AND EXCEPTIONS

Each Proposer shall submit a statement entitled "Deviations and Exceptions" showing the deviations and/or exceptions, if any, from the RFP. Each exception or deviation shall be listed, together with sufficient data to fully explain the scope and the reason therefor. No material submitted which amends or modifies any part of the RFP shall bind the Authority unless contained in a "Deviations and Exceptions" list and expressly agreed to in writing by the Authority.

Incorporation by reference of Proposer's standard terms and conditions, and the transmittal of such terms and conditions in a manner other than as part of the "Deviations and Exceptions" list, shall not be deemed in compliance with this paragraph and shall be of no effect.

Submitted Deviations and Exceptions will be considered during the Bid Evaluation period and become part of the Evaluation Criteria.

X. WITHDRAWAL OF PROPOSAL

Permission will not be given to modify or explain any proposal after it has been deposited with the Authority.

No proposal shall be withdrawn or cancelled before the time designated in this RFP for opening such proposals except upon such conditions as the Authority may deem to be necessary.

XI. COMPARISON OF BIDS

Wherever applicable, equalizing elements or factors not specially mentioned or provided for herein or any element or factor in addition to price which would affect the best interests of the Authority will be taken into consideration in making an award of an agreement for services. The Authority also reserves the right to take into consideration in making award of an agreement for services the facilities of the Proposer, the ability of the Proposer to provide services within the time specified, and the Authority's previous experience with the Proposer.

XII. EVALUATION CRITERIA

Potential bidders will be evaluated on their demonstrated expertise within each specified area.

- A. Detailed experience of prior pertinent work.
- B. References to corroborate their relevant experience and competency in working with the areas detailed in the SOS.
- C. Resumes of representative consultant personnel and their intended roles as it pertain to the outlined SOS.
- D. Competitive billing rates.
- E. Commercial Evaluation

Upon review of submitted proposals, NYPA may enter into an Agreement with one or more consultants within each work area. NYPA reserves the right to not issue contracts, if the work is deemed no longer necessary or if respondents do not meet RFP and/or contract requirements as detailed in this document.

XIII. RATE STRUCTURE

Proposer should carefully read the Request for Quotation and its Compensation Schedule

XIV. AWARD OF CONTRACT

Proposer shall note the following:

- A. Subject to the rights hereinafter reserved and any other applicable rights, it is the Authority's intention to award an agreement for all or part of the services, within ninety (90) days after opening of Proposals, to the Proposer whose proposal fully conforms to the requirements of the RFP and complies with all the provisions required to render it formal, and as deemed most advantageous to the Authority.
- B. The right is reserved, as the interest of the Authority may require, to reject any proposal or all proposals, and any informality in any proposal received. Without limiting the generality of the foregoing, and solely for guidance in preparation of proposals, the Proposer is informed that a proposal may be rejected if the Proposer cannot show to the satisfaction of the Authority:
 - 1. That it has the necessary capital and experience, or that it owns, controls, or can procure the necessary services to commence the service at the time prescribed and thereafter to prosecute and complete the service at the rate, or within the time specified, or that it is not already obligated for the performance of other service which would delay the commencement, prosecution, or completion of the service contemplated by the Agreement.
 - 2. Any proposal which, in the opinion of the Authority is unbalanced may be rejected.
 - 3. The facts as to business and technical organization, prior determinations of non-responsibility, financial and other resources, or business experience as related to the services proposed upon.

Award of this Proposal to the successful Proposer shall be made by issuance of the attached Agreement, properly completed and executed by the Authority and the Proposer and incorporating the portions of Proposer's proposal acceptable to the Authority.

XV. PRIVACY LAW NOTIFICATION

SECTION 941(1)(d) OF THE NEW YORK PUBLIC OFFICERS LAW REQUIRES THIS NOTICE TO BE PROVIDED WHEN COLLECTING PERSONAL INFORMATION FROM ENTITIES DOING BUSINESS WITH THE NEW YORK POWER AUTHORITY.

This information is requested pursuant to Article 5, Title I of the Public Authorities Law and Section 6041 of the Federal Internal Revenue Code. The principal purpose for which the information is collected is to comply with requirements of the Federal Internal Revenue Code in accordance with Section 96(1) of the Personal Privacy Protection Law, particularly subdivisions (b), (e) and (f). Because services providers doing business as 1099 status Consultants typically submit their personal social security numbers and residential addresses to the Authority for business use and tax requirements, such

personal information must be maintained by the Authority in accordance with New York's Personal Privacy Protection Law.

Failure to provide the requested information may result in fines by the Federal Government for failure to properly report income.

This information will be maintained by the Office of Procurement at the Power Authority of the State of New York located at 123 Main Street, 5th Floor, White Plains, New York, 10601, or when appropriate, at one of the various Authority facilities.

NON-COLLUSIVE PROPOSAL CERTIFICATION

Proposer shall submit one signed non-collusive proposal certificate with each copy of its proposal submitted.

- A. By submission of this proposal, each Proposer and each person signing on behalf of any Proposer certifies as to its own organization, under penalty of perjury, that to the best of his /her knowledge and belief:
1. The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Proposer or with any competitor;
 2. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other or to any competitor; and
 3. No attempt has been made or will be made by the Proposer to include any other person, partnership, or corporation to submit or not to submit a proposal for the purpose of restricting competition.
- B. A proposal shall not be considered for award nor shall any award be made where A. 1, 2 and 3, above have not been complied with; provided however, that if in any case the Proposer cannot make the foregoing certification, the Proposer shall so state and shall furnish with the proposal a signed statement which sets forth in detail the reasons therefore. Where A.1, 2 and 3, above have not been complied with, the proposal shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the proposal is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.
- C. Each proposal made by one or more corporations individually or as members or a joint venture or partnership shall be deemed to have been authorized by Proposer's respective board or boards of directors as the case may be, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of this non-collusive proposal certification as the act and deed of such respective corporations.

FIRM NAME:

BY:

(Name-Signed)

BY:

(Name-Signed)

TITLE:

DATE:

P.O. ADDRESS OF THE BIDDER

Company Name: _____

Street Address: _____

City: _____ State/Province: _____ Zip Code: _____

Country: _____ Email Address: _____

Telephone No: _____ Ext: _____ Fax No: _____ Fed ID No. _____

ADDRESS FOR CHECK PAYMENTS: (If different from above)

City: _____ State/Province: _____ Zip Code: _____

Country: _____

If a Corporation

Name:

Address

President: _____

Secretary: _____

Treasurer: _____

If a Partnership

Name of General Partners:

Address

If an Individual

Name of Individual:

Address

If a Joint Venture

Name of General Partners:

Address

SAMPLE TITLE OF AGREEMENT

THIS AGREEMENT effective the _____ day of _____, is between the POWER AUTHORITY OF THE STATE OF NEW YORK, (hereinafter referred to as “Authority”) a corporate municipal instrumentality of the State of New York, having a principal place of business at 30 South Pearl Street, Albany, New York, 12207, and an office located at 123 Main Street, White Plains, New York, 10601, and _____ (hereinafter referred to as “Consultant”), a _____, organized and existing under the laws of the State of _____, having its principal place of business at _____.

WHEREAS, the Authority desires to retain the Services of the Consultant for the purpose providing of a s m o r e f u l l y d e s c r i b e d i n t h e annexed Schedule of Services;

NOW THEREFORE, in consideration of the mutual promises made herein, the parties agree as follows:

ARTICLE 1. – Schedule of Services and Time of Completion

The Consultant will perform the Services as more fully described in the Schedule of Services (“the Services”), attached hereto and made a part hereof. All Services will be performed within the time period(s) set forth in the Schedule of Services, or if none is set forth, in such time and in such sequence as the Authority shall direct. Time is of the essence in the performance of all Services hereunder.

The term of this Agreement shall be three (3) years.

ARTICLE 2. – Compensation

The Authority shall pay, and the Consultant shall accept as full compensation for the Services to be performed hereunder, including all costs and expenses of any kind, the amount set forth in the annexed Compensation Schedule. The Authority makes no representation as to the amount of Services intended or expected to be performed hereunder.

ARTICLE 3. Employment of Consulting Personnel

- A. The Authority at its discretion may hire any employee(s) or subcontractor(s) of the Consultant, but in no event, shall the employee(s) or subcontractors(s) be hired before being on assignment at the Authority for a period of at least three (3) months. No fee will be paid to the Consultant by the Authority in the event of any such hiring.

- B. Consultant shall do nothing to prohibit any person from working at any Authority site or office including enforcing any contrary provision in any Contract it may have with any of its past or present employees and contractors. Consultant shall freely give its consent to its past or present employees and contractors to do work and shall fully cooperate with such employees and contractors, the Authority and its other consultants to affect such freedom of employment. It is the intent of this provision that should this Contract be terminated for any reason, or not renewed, all past or present employees and contractors of the consultant shall have the opportunity to provide their services at any Authority site or office and shall not be prevented from such acceptance by any act of omission or act of the Consultant.

ARTICLE 4. Relationship of Parties

- A. Consultant is an independent Consultant and not an agent or employee of the Authority.
- B. All personnel furnished by the Consultant pursuant to this Agreement shall be employees of the Consultant, compensated and treated by the Consultant as such and not as independent Consultants. Consultant shall make all appropriate federal and state withholdings from, and contributions on behalf of, such personnel, including income tax, social security tax (FICA), unemployment insurance and workers' compensation insurance payments. Consultant will issue Internal Revenue Service W-2 Forms, for such personnel, and not IRS 1099 Forms, for all work performed at the Authority.
- C. With respect to furnished personnel, Consultant shall be responsible for all administrative obligations associated with its employment of the personnel furnished, and shall make all other submissions and payments to governmental agencies which are required for employees, including but not limited to, workers' compensation and unemployment insurance; and where applicable: pension benefits, health and life insurance benefits, and vacation benefits.
- D. Upon request the Consultant shall provide sufficient assurances (including allowing inspections and providing copies of all relevant documents, such as but not limited to Form I-9) that the Consultant is complying with all of its obligations in respect of such personnel.
- E. If any Services are sub-contracted, Consultant shall be responsible for compliance with the foregoing requirements by its subcontractors.

ARTICLE 5. – Termination

- A. The Authority, within its sole discretion, and for any reason or for no reason may terminate this Agreement at any time, as to all or any part of the Services thereof, upon notice in writing to the Consultant. Unless otherwise specified in such notice, the

Consultant shall immediately discontinue all terminated Services, and the placing of any orders for materials, facilities or supplies in connection with such Services, shall proceed to cancel promptly any existing orders, and shall terminate sub-contracted work.

- B. The Authority reserves the right to request removal and termination of any Contractor personnel for any reason or for no reason.
- C. The Authority reserves the right to terminate this Agreement in the event it is found that the Consultant's Certification of Compliance (contained in Appendix J) filed by the Consultant in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Consultant in accordance with Article 9 of this Agreement.
- D. Except in the event of termination for non-performance and/or unsatisfactory performance by the Consultant, the Authority shall pay the Consultant for all Services satisfactorily performed to the date of termination and for such other Services as the Authority may direct the Consultant to perform to bring the terminated part of Services to an orderly conclusion. Such payment shall be in accordance with Article 2 "Compensation," and such payment shall relieve and discharge the Authority from any further claims of, or liability to, the Consultant.

ARTICLE 6. – Warranty

- A. Consultant warrants that it and its subcontractors will perform the Services with due care and in conformity with the highest professional standards using competent, qualified personnel, skilled in their respective specialties.
- B. In addition to any remedies otherwise available to the Authority for breach of the foregoing warranty, should such breach occur, Consultant will, at the option of the Authority, re-perform the Services which fail to meet the warranty on an accelerated basis at no cost to the Authority.

ARTICLE 7. – Insurance

General Requirements

The Contractor, and each subcontractor, will keep in force at its own cost, until final acceptance of the Work, the insurance coverages listed herein. The Contractor will not commence Work until the Authority has been furnished a completed certificate or certificates of insurance. Failure to maintain the required insurance throughout the term

of the Contract, including any Contract term modifications, is a material breach of the Contract and may result in a stop work order or termination of the Contract for cause.

All coverages, except Workers' Compensation (see i), below), should be evidenced on: 1) the Authority's annexed form; or 2) an Acord form accompanied by the following two (2) endorsements: **Additional Insured** with the identifying policy number, specifically naming the New York Power Authority and the State of New York as additional insureds to the policy and **Waiver of Subrogation** endorsement.

The form and sufficiency of each insurance policy required to be obtained herein will be subject to the Authority's approval and with insurance companies acceptable to the Authority. The Contractor shall notify the Authority no later than 10 days prior to the effective date of a change to or cancellation of insurance policies required herein. The Contractor will deliver or cause to be delivered to the Authority, upon request, a copy of each such insurance policy.

Any and all deductibles or self insured retentions, in or relating to the below described insurance policies shall be assumed by and be for the account of, and at the sole risk of the Contractor.

j) Workers' Compensation Insurance for statutory obligations imposed by Workers' Compensation/Occupational Disease Laws, including Employer's Liability Insurance with a minimum limit of \$1,000,000. When applicable, coverage shall include The United States Longshoreman's and Harbor Workers' Compensation Act (44 U.S.Stat 1424) and the Jones Act (41 U.S. Stat 988). Under Sections 57 & 220 Subd. 8 of the New York State Workers' Compensation Law, it is required that Contractors doing business with a Municipal or State entity evidence proof of workers' compensation coverage on approved forms, as listed below:

- 1) If coverage is with a private insurance carrier, the entity must provide evidence of coverage on a completed C105.2 form. The C105.2 form is supplied and completed by the insurance carrier or its authorized agent.
- 2) If coverage is with the State Insurance Fund, the entity must provide a completed U-26.3 form provided by the Fund.
- 3) If the business entity has been approved by the Workers' Compensation Board's Office of Self Insurance as a qualified self insurer, a completed SI-12 form is required. The SI-12 form is provided by the Board's Office of Self Insurance.

ii) Commercial General Liability Insurance, which includes Contractual Liability

and Products/Completed Operations Liability Commercial General Liability Insurance, which would include Contractual Liability and Products/Completed Operations Liability coverages covering all operations required to complete the Work and where applicable coverage for damage caused by any explosion or collapse with minimum limits of \$5,000,000 per occurrence for bodily injury and \$5,000,000 per occurrence for property damage liability.

- 1) The Authority and the State of New York must be named as additional insureds to the Contractor's policy and, if applicable, each subcontractor's policy, including cross-liability coverage evidenced on the certificate(s) furnished to the Authority. The policy must contain an endorsement stating that the insurer will have no right of recovery or subrogation against the Authority or the State of New York. The Contractor must submit evidence satisfactory to the Authority of its compliance with this requirement. It is the intent of the parties that the insurance placed in accordance with the provisions of this paragraph will be primary insurance and will protect the Contractor, the Authority and the State of New York for all losses arising from all operations, activities, work, services, items or performance relating to the Contract.
 - 2) The Products/Completed Operations Liability coverage will be provided for a period of at least two (2) years after the completion of the Work.
 - 3) The Contractual Liability Insurance coverage will insure the performance of the contractual obligations of the Contractor contained in this Contract, including, without limitation, all contractual indemnity obligations.
- iii) A Business Automobile Policy protecting the Contractor and each subcontractor for automobile bodily injury and property damage liability, including coverage for liability arising out of owned, hired or non-owned vehicles. Such insurance will cover all vehicles bearing, or required to bear by the motor vehicle laws of the state of registry, licenses or registration plates in limits of at least \$1,000,000 each accident.
- iv) If the Work requires professional services, such as, but not limited to, accounting, architectural, engineering, legal, medical and surveying, a standard professional liability insurance policy with a minimum limit of \$1,000,000. If applicable, the policy is to be endorsed to include "fee for service" coverage and evidence of endorsement must be furnished to the Authority.

- v) If the Work requires the use of watercraft or aircraft, Watercraft or Aircraft Liability Insurance with a minimum limit of \$1,000,000 per occurrence is required.
- vi) If the Work poses an environmental risk, known or suspected, Pollution Liability with minimum limits of \$1,000,000 per occurrence is required.

In lieu of Commercial General Liability Insurance, at the Authority's discretion, it may agree to accept an Owners and Contractors Protective Liability Policy naming the New York Power Authority and the State of New York as the named insureds, and with the following minimum limits:

Bodily Injury Liability \$5,000,000 per occurrence

Property Damage Liability \$5,000,000 per occurrence

This policy, the cost of which will be borne by the Contractor, will cover the liability of the Authority and the State of New York with respect to the Work, services, or items to be furnished hereunder, or contract to be performed, including omissions or supervisory acts of the Authority, if any.

Such insurance will contain provisions which state that the policy will also respond to claims or suits by employees of the Contractor or subcontractor against the Authority or the State of New York or by the Authority or the State of New York against the Contractor or any other insured thereunder.

This section GC-1 Insurance is independent of and does not reduce or diminish any other obligation or requirement of the Contractor under any other provision of this Contract.

ARTICLE 8. – Records, Accounts, Inspection and Audit

- A. The Consultant, without additional compensation therefore, shall keep records and books of account, showing the actual cost to it of all items of labor, material, equipment, supplies, services and other expenditures of whatever nature for which reimbursement is authorized under this Agreement. The system of accounting to be employed by the Consultant shall conform with the Consultant's normal practice.
- B. The Consultant's correspondence, records, general ledgers, cancelled checks, time sheets, vouchers and books of account insofar as they pertain to the direct cost of the Services performed or disbursements made for the Authority's account under this Agreement will be open at all reasonable times during the period of this agreement, and for three (3) years from the date of final payment under this agreement, for inspection by the

Authority or any authorized government representative. Copies shall be furnished if requested, at no cost to the Authority. No additional compensation will be paid for the preservation of such papers.

- C. The Authority shall at reasonable times have access to the premises, Services and materials, correspondence, instructions, working papers, plans, drawings, specifications, and memoranda of the Consultant pertaining to said Services and the Consultant shall provide facilities adequate for examination and audit of same by Authority. No additional compensation will be paid to the Consultant for audit support.

ARTICLE 9. – Assignment and Subcontracting

Any assignment, subcontracting or transfer of any obligation of Consultant under this Agreement shall be entirely void without the prior written consent of the Authority. The Consultant's choice of subcontractors shall be subject to the Authority's approval prior to commencing any Services hereunder. No contractual relationship shall exist between the Authority and any subcontractor. The Consultant shall not be relieved of any of its obligations imposed by the terms of this Agreement for any part of the subcontracted Services.

ARTICLE 10. – Notices

- A. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
- (a) via certified or registered United States mail, return receipt requested;
 - (b) by facsimile transmission;
 - (c) by personal delivery;
 - (d) by expedited delivery service; or
 - (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

NEW YORK POWER AUTHORITY
PROCUREMENT DIVISION

Name: Ms. Patricia Leto
Title: Vice President of Procurement
Address: 123 Main Street
 White Plains, NY 10601
Telephone Number: 914-681-6623
Facsimile Number: 914-681-6783
E-Mail Address: Patricia.Leto@nypa.gov

with a copy to:

NEW YORK POWER AUTHORITY
LAW DEPARTMENT
Address: 123 Main Street
White Plains, NY 10601

[Contractor Name]

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

- B. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- C. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

ARTICLE 11. – Indemnification

In addition to and not in limitation of the Consultant's insurance obligations under this Agreement, and, to the extent permitted by law, the Consultant shall assume the entire responsibility and liability for and defense of, and pay and indemnify the Authority against any loss, expense or liability and will hold the Authority harmless from and pay any loss, damage, cost of expense (including without limitation, judgments, attorney's fees, and court costs) which the Authority incurs because of injury to or death of any person or on account of damage to property, or any other claim arising out of, in connection with, or as a consequence of, the performance of the Services and/or any act or omission of the Consultant or any of its subcontractors, employees, agents or anyone directly or indirectly employed by Consultant or anyone for whose acts Consultant may be liable.

ARTICLE 12. – Safety Requirements and Performance Data

- A. All Consultants supplying personnel, or sub-contracted personnel, to Authority facilities, are responsible for reporting any injuries or illnesses arising at these facilities to the Authority.
- B. Each employer who is subject to the record keeping requirements of the Occupational Safety and Health Act (OSHA) 1970 must maintain a log of all recordable occupational injuries and illnesses. “OSHA Form 300” entitled “Log of Work-Related Injuries and Illnesses,” may be used to log and summarize occupational injuries and illnesses.

ARTICLE 13. – Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any action at law, suit in equity or judicial proceeding for the enforcement of this contract or any provisions there to shall be instituted by the Consultant only in the courts of the State of New York.

ARTICLE 14. – Proprietary Nature of Work

- A. The Consultant’s Services under this contract shall be the exclusive property of the Authority. All plans, drawings, and working papers and specifications of the Consultant, and all other data, pertaining to the Services shall be the property of the Authority and shall be turned over to the Authority upon completion of the Services by the Consultant, or upon termination of this Agreement.
- B. All data, reports or other written records of the Services, and all information pertaining to the Services, shall be considered proprietary to the Authority by the Consultant and held in confidence. The Consultant shall not publish or otherwise disclose to others such data, reports, written records or information without the prior written consent of the Authority.

ARTICLE 15. – Confidentiality

- A. As used in this Agreement, “Confidential Information” shall mean (i) any and all information (whether written, digital or in any other form) contained in or relating to the Services, (ii) oral disclosures of information or data relating to the Services, or (iii) information or data obtained as a result of visual access to such information during site visits to Authority premises.

The Consultant shall only use the Confidential Information for the purpose of providing the Services or receiving the Services pursuant to the Agreement.

- B. In order to preserve the confidentiality of the Confidential Information, the Consultant shall:
- i) protect and preserve the confidential and proprietary nature of all Confidential Information and use the same care and discretion to avoid disclosure of Confidential Information as the Consultant uses with respect to its own confidential information;
 - ii) hold the Confidential Information in the strictest confidence and not disclose any Confidential Information to any persons other than the Consultant's employees or representatives of the Consultant who need to know the Confidential Information for the purposes described in the Agreement;
 - iii) not use or make any records or copies of, or permit anyone else to use or make any copies of, the Confidential Information, except as may be required for the purposes of the Agreement;
 - iv) notify the Authority immediately of any loss or misplacement of Confidential Information, in whatever form;
 - v) comply with reasonable security procedures as may be requested by the other from time to time for protection of the Confidential Information, including without limitation, procedures concerning the transportation, storage and use of Confidential Information and computer and/or data processing media containing any Confidential Information.
- C. In the event the Consultant is required by subpoena, court order or other similar process to disclose Confidential Information, it shall (unless prohibited from doing so by law or by court order) provide the Authority with immediate written notice and documentation thereof, so that the Authority may seek a protective order or other appropriate remedy.
- D. In no event, however, shall the Consultant disclose Confidential Information at any time which is deemed confidential by operation of law, rule, regulation or other governmental order.
- E. For the avoidance of doubt, Confidential Information shall remain at all times the exclusive property of the Authority.
- F. The Consultant shall not make any public announcements relating to this Agreement without the prior written approval of the Authority, except for (i) any announcement intended solely for internal distribution within the Consultant's entity, or (ii) any disclosure required by law, regulation, or government agency request.
- G. The obligations of the Consultant under this Article shall remain in effect as long as the Consultant is in possession of Confidential Information and this Article shall survive termination or expiry of this Agreement.

ARTICLE 16. – Publicity

No marketing, publicity, promotion or advertising regarding this Agreement will be issued by the Consultant without the Authority's prior written approval, and, if applicable, also with the prior written approval from the Authority's customer where the Service will be or is being performed, which approval will not be unreasonably withheld. Any responses to news media inquiries developed by the Consultant, related to the Agreement, must be coordinated with the Authority for review and approval. Letters, speeches, news and/or press releases, articles for publication, etc. related to the Agreement, will be coordinated with the Authority for review and approval prior to release. Any and all communications, whether verbal or written, must be submitted to the Authority's Corporate Communication Business Unit for prior review and approval.

Consultant agrees to abide by these terms regarding public announcements for a period of two (2) years following the expiration of this Agreement.

ARTICLE 17. – Entire Agreement

The terms and conditions of this Agreement are contained in this Article 17, the foregoing Articles 1 through 16, and the following attached documents:

- A. Schedule of Services, consisting of pages SS-1 thru SS-6
- B. Compensation Schedule, consisting of page CS-1 thru CS-4
- C. Attachments A, B and C.
- D. Appendices A, B, C, D, E, G, H, I, J.
- E. Certificate of Insurance

which collectively shall constitute the entire agreement between the parties with respect to the subject matter thereof. All other letters, agreements, or communications whatsoever between the parties, whether oral or written, with respect to the subject matter are superseded by this Agreement and shall not be binding upon either party. This Agreement may not be changed orally. Any purported change, or waiver of any provision, which is not in writing and has not been signed by the parties shall be entirely void.

IN WITNESS WHEREOF, the Authority and the Consultant have executed this Agreement in triplicate, two parts which are to be returned to the Authority and one part to be retained by the Consultant, effective as of the date first written above.

NEW YORK POWER AUTHORITY

By:
(Name-Signed)

By:
(Name-Typed/Printed)

Title:

Date:

AGREED AND ACCEPTED:

Insert Company Name

By:
(Name-Signed)

By:
(Name-Typed/Printed)

Title:

Date:

APPENDIX "A"

I. LIEN LAW

The attention of the Contractor^{*} is specifically called to the provisions of Section 25 and Article 3A of the lien law of the State of New York, as amended, wherein funds received by a contractor for a public improvement are declared to constitute trust funds in the hands of such contractor to be applied first to the payment of certain claims. Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Authority a complete release of all liens arising out of this Contract, or receipts in full in lieu thereof and, if required in either case an affidavit that so far as he has knowledge or information the releases and receipts include all the labor and material for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt; in full, furnish a bond satisfactory to the Authority, to indemnify it against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Authority all monies that the latter may be compelled to pay in discharging such a lien, including all costs and reasonable attorney's fee.

II. WORKER'S COMPENSATION LAW

A. The Contractor specifically agrees, as required by the New York Finance Law, Section 142 that:

- (1) He will secure Workers' Compensation for the benefit of, and keep insured during the Contract period, such employees as are required to be insured by the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Workers' Compensation Law.
- (2) The Contract shall be void and of no effect unless the Contractor complies with this section.

III. PAYMENT OF TAXES

- A. Except as provided in the following paragraphs of this section, the Contractor shall pay all applicable New York and local sales and compensating use taxes on sales to, or use by, the Contractor of tangible personal property and services employed by the Contractor in the performance of the Contract. The contractor shall include all costs in connection therewith in the applicable lump sums, unit process or other payment terms bid in the schedule. The Authority will not reimburse the Contractor for such taxes paid except taxes for which exemption is not provided by law which are part of actual expenses paid by the Contractor which the Contract expressly provided reimbursement for.
- B. Under the provisions of the New York State Sales and Compensating Use Tax Act, the Authority is an organization exempt from the payment of such state and municipal taxes on sales to the Authority of tangible property or services. The Authority is not required to furnish exemption certificates, and the Authority's contract may be accepted in lieu of an exemption certificate with the Contractor's copy as proof that the sales are exempt.
- C. Pursuant to New York State Law Sections 1115(a); 1116(a) and 1210(a), receipts from tangible personal property sold to a contractor, subcontractor or repairman for use in erecting a structure or building of the Authority or adding to, altering or improving real property, property or land of the Authority, as the terms real property, property or land are defined in the Real Property Tax Law, are exempt from the tax on retail sales imposed under Section 1105 of the Tax Law and the compensating use tax imposed under Section 1110 of the Tax Law and corresponding City and Country sales and use taxes; provided, however, such tangible personal property is to become an integral component of such structure, building or real property.
- D. Pursuant to Paragraph 12 of subdivision (a) of Section 1115 of the New York State Tax Law and Section 1210(a)(1) as it applies to cities of less than one million, receipts from machinery or equipment for the use or consumption, directly and predominantly in the production of tangible personal property, electricity or steam for sale by manufacturing, processing, generating or assembling (but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus) are exempt from the tax on retail sales imposed under Section 1105 of the Tax Law, and the Compensating Use Tax imposed under Section 110 of the Tax Law, and imposed by any county (except one wholly a city) or city of less than one million.
- E. If Contractor is billed for any New York State or local sales or compensating use tax with respect to such machinery or equipment or with respect to such tangible personal property for use in erecting such structure or building and which is to become an integral component part of such structure, building or real property, he shall pay such tax under protest, preserving his right to a refund, and shall notify the Authority of any such payment within 15 days of making it. The Authority will assist the Contractor in obtaining a refund of any such tax. If any such tax is finally determined to be payable by the highest authority from which the Authority elects to seek a determination as to the legal necessity of such payment, the Authority will reimburse Contractor for the amount paid, including any penalty or interest.

If requested by Contractor, the Authority will reimburse the Contractor prior to such final determination for any such tax paid under protest upon assignment by Contractor to Authority of all Contractor's rights.

- F. The Contractor will not be paid as to any item of tax on the sale or use of tangible personal property which became an integral component part of such structure, building or real property unless he furnishes evidence that any such tax paid thereon under protest.

IV. STATE FINANCE LAW LOBBYING PROVISIONS

For purposes of this Section, "Contacts" shall mean any oral, written or electronic communication with the Authority under circumstances where a reasonable person would infer that the communication was intended to influence the procurement.

Pursuant to State Finance Law §§139-j and 139-k, restrictions are imposed on certain communications between the Authority and a Bidder/Contractor during the procurement process. A bidder/contractor is restricted from making Contacts from the earliest invitation for a bid or request for proposal through the final award and approval of the procurement contract by the Authority ("Restricted Period") to Authority employees, other than those designated for such purpose in the initial solicitation, unless it is a Contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Authority employees are also required to obtain certain information when Contacted during the Restricted Period. The Authority shall make a determination of the responsibility of the bidder/contractor in compliance with these two statutes. Certain findings of non-responsibility can result in a rejection for contract award and in the event of two findings within a four year period, the bidder/contractor is debarred from obtaining governmental procurement contracts. Further information about these

* As used throughout this Appendix, the term "Contractor" shall mean the party performing the work hereunder for the Authority.

requirements can be found in Appendix J.

V. OTHER APPLICABLE LAWS AND REGULATIONS

The Contractor shall comply with all applicable laws, rules and regulations of such governments and governmental agencies as have jurisdiction with respect to its business and the work to be performed under this Contract. Violation of such rules and regulations, or conditions or practices prescribed thereby, occurring in the performance of the work hereunder by the Contractor shall not relieve the Contractor of any of his obligations set forth herein, and any penalties or expense resulting shall be the responsibility of the Contractor and not of the Authority.

VI. LABOR PROVISIONS

A. The execution of the Contract by the Contractor binds him to the following specific requirements. The Contractor specifically agrees that:

- (1) No laborer, worker or mechanic in the employ of the Contractor, subcontractor or other person doing or contracting to do the whole or any part of the work included in this Contract shall be permitted or required to work more than 8 hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.
- (2) The wages to be paid to, and the supplements (fringe benefits) to be provided for, the laborers, workers and mechanics so employed in the performance of the Contract shall be not less than the prevailing hourly rate wages and supplements listed in the prevailing rate schedules, if any, annexed to the specifications for the work, and any re-determinations, (updating) of such schedules by the Commissioner of Labor after the Contract is let. Such re-determination shall be deemed part of the contract to be effective as prescribed in the re-determination. The failure to have the initial prevailing rate schedules annexed to the specifications shall not relieve the Contractor, subcontractor or other person from doing or contracting to do the work from the requirements with respect to paying and providing the prevailing wages and supplements.
- (3) In situations in which there are not sufficient laborers, workers and mechanics who may be employed to carry on expeditiously the work contemplated by the Contract and the immediate commencement or prosecution or completion without undue delay of the work is necessary for the preservation of the contract site and for the protection of the life and limb of the persons using same, such laborers, workers and mechanics shall be permitted or required to work more than 8 hours in any one calendar day; provided however, that upon application of the Contractor, the Authority shall have first certified to the Commissioner of Labor of the State of New York that such public work is of an important nature and that any delay in carrying it to completion would result in serious disadvantage to the public; and provided further that such Commissioner of Labor shall have determined that such an emergency does in fact exist, as provided in Subdivision 2 of Section 220 of the Labor Law.
- (4) Failure of the Authority to make certification to the Commissioner of Labor shall not entitle the Contractor to any damages whatsoever.
- (5) The Contractor and all subcontractors shall submit to the Authority, within thirty (30) days after issuance, of its first payroll and every thirty (30) days thereafter, a transcript of the original payrolls, subscribed and affirmed as true under penalty of perjury. The filing of the payrolls by the Contractor, with the Authority, as required by Labor Law Section 220, is a condition precedent to payment of any sums due and owing the Contractor for the work. The Contractor and each subcontractor shall furnish to the Authority on demand any other information required by the Authority to satisfy it that the provisions of the Labor Laws as to the hours of employment and rates of wages are being performed.
- (6) The Labor Law provides that the Contract shall be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than the stipulated wage scales as provided in Labor Law, Section 220, Subdivision 3 as amended.

B. The Contractor specifically agrees as required by the provisions of the Labor Law, Section 220-e as amended, that:

- (1) In hiring of employees for the performance of the work under this contract or any subcontract hereunder, neither he nor any of his subcontractors, nor any person acting on his or their behalf shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
- (2) Neither her nor any of his subcontractors, nor any person acting on his or their behalf shall in any manner discriminate against or intimidate any employee hired for the performance of the work under the Contract or a subcontract on account of race, creed, color, disability, sex or national origin.
- (3) There may be deducted from the amount payable to the Contractor by the Authority under the Contract a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the Contract; and the Contract may be cancelled or terminated by the Authority, and all monies due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the Contract.
- (4) The provisions of Section 220-e covering manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

VII. NO COLLUSION OR FRAUD

Contractor hereby agrees that the only person interested as principal or principals in the proposal submitted by Contractor for this agreement are named therein, and that no person other than those mentioned therein, has any interest in the above-mentioned proposal or in the securing of the award and that this Contract has been secured without any connection with any person or persons other than those named and that the proposal is in all respects fair and was prepared and the Contract was secured without collusion or fraud and that neither any officer nor employee of the Authority has or shall have a financial interest in the performance of the Contract of in the supplies, work or business to which it relates or in any portion of the profits thereof.

ACCEPTED AND AGREED TO:

NAME OF CONTRACTOR

Title _____

Date _____

NAME OF OFFICER-SIGNED

NAME OF OFFICER/PRINTED/TYPED

* As used throughout this Appendix, the term "Contractor" shall mean the party performing the work hereunder for the Authority.

APPENDIX "B"

A. GENERAL

1. This statement is intended to establish rules and regulations as required under Section 2880 of the Public Authorities Law describing the policy of the Power Authority of the State of New York (the "Authority") to promptly pay all proper invoices submitted by any Contractor. Subject to the conditions and exceptions set forth in Section 2880 and herein, in the event any proper invoice is not paid promptly, the Authority shall be liable for the payment of interest on late payments. This policy shall apply to all Contracts entered into on or after April 30, 1988.

B. DEFINITIONS

1. "CONTRACT" means an enforceable agreement entered into between the Authority and a Contractor.
2. "CONTRACTOR" means any person, partnership, private corporation or association: a) selling materials, equipment or supplies or leasing property or equipment to the Authority; b) constructing, reconstructing or repairing buildings, highways or other improvements for or on behalf of the Authority; or c) rendering or providing services to the Authority pursuant to a Contract.
3. "DESIGNATED PAYMENT OFFICE" means the office designated by the Authority to which a proper invoice is to be submitted by a Contractor.
4. "PROPER INVOICE" means a written request for a Contract Payment that is submitted by a Contractor to the Authority's designated payment office setting forth the description, price and quantity of goods, property or services delivered or rendered in accordance with the terms of the Contract, in such form and supported by such other substantiating documentation as the Authority may reasonably require.
5. "RECEIPT OF AN INVOICE" and "INVOICE RECEIVED DATE" mean (a) the date on which proper invoice is actually received in the designated payment office, or (b) the date on which the Authority receives the purchased goods, property or services covered by the proper invoice, whichever is later. With regard to final payments on construction contracts, (b) shall mean the date on which all the Contract Work has been accepted as completed by the Authority in accordance with the Contract terms.
6. "SET-OFF" means the reduction by the Authority of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Authority.

C. RESPONSIBILITY FOR PROMPT PAYMENT

1. The Authority's Controller shall have the responsibility for the implementation of the Prompt Payment Policy and the prompt payment of all proper invoices under the general guidance and supervision of the Executive Vice President & Chief Financial Officer.

D. PROMPT PAYMENT PROCEDURE

1. A Contractor shall request payment under a Contract by submitting a proper invoice to the Authority at its designated payment office at the time and in the manner specified in the Contract.
2. The Authority shall have fifteen (15) calendar days after receipt of an invoice at its designated payment office to notify the Contractor of certain facts and conditions, including but not limited to those listed below, which, in the opinion of the Authority's Controller, justify extension of the statutory payment period.
 - a) there is a defect in the delivered goods, property or services;
 - b) there is a defect in the invoice;
 - c) there are suspected defects or improprieties of any kind the existence of which prevent the commencement of the statutory payment period;
 - d) prior to payment, a statutory or contractual provision requires an inspection period or an audit to determine the resources applied or used by the Contractor in fulfilling the contract terms;
 - e) a proper invoice must be examined by the federal government prior to payment;
 - f) the Authority is prevented from making payment by reason of the filing of a lien, attachment, other legal process or requirement of law.

Any time taken to satisfy or rectify any such facts or conditions shall extend the date by which contract payment must be made in order for the Authority not to become liable for interest payments by an equal period of time.

3. Should the Authority fail to notify a Contractor of such facts and conditions within fifteen calendar days of the invoice received date, the number of days allowed for payment of the corrected proper invoice will be reduced by the number of days between the fifteenth day and the day that notification was transmitted to the Contractor. Should the Authority, in such situations, fail to provide reasonable grounds for its contention that a fact or condition justifying a time extension exists, the date by which contract payment must be made in order for the Authority not to become liable for interest payment shall be calculated from the invoice received date.
4. The Authority shall make payment within forty five (45) calendar days after the invoice received date. Effective July 1, 1989, the Authority shall make payment within thirty (30) calendar days, excluding legal holidays, after invoice received dates occurring after that date.
5. Except for the payments described in Paragraph E, every payment by the Authority to a Contractor pursuant to a Contract is eligible for interest should the Authority fail to make such payment within forty five (45) days after the invoice received date for contracts entered into between April 30, 1988 and June 30, 1989 and within thirty (30) days for contracts entered into on or after July 1, 1989.
6. The Authority shall not be liable for interest on any retention amounts withheld by the Authority in accordance with the terms of the Contract.
7. Interest shall be computed at the rate set by the state tax commission for corporate taxes pursuant to paragraph one of subsection (e) of section 1096 of the tax law, but the Authority shall not be liable for payment of interest when such interest is less than ten dollars.
8. The Authority has available funds in its custody to pay all interest penalties.

E. EXCEPTIONS

1. Payments are not eligible for interest when they are due and owing by the Authority:
 - a) under the eminent domain procedure law;
 - b) as interest allowed on a judgement by a court pursuant to any provision of law other than section 2880 of the Public Authorities Law;
 - c) to the federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government including but not limited to, counties, cities, towns, villages, school districts, or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;
 - d) in situations where the Authority exercises a legally authorized set-off against all or part of the payment due the Contractor.

APPENDIX "C"

I. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) PARTICIPATION GOAL REQUIREMENT

- (A) In accordance with the Authority's Minority and Women-Owned Business Enterprise Policy and with Article 15-A of the Executive Law and the regulations promulgated thereto, the Authority has established the following Minority Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) participation goals for this contract. The goals are applicable to the total contract price (i.e., the base contract and all change orders). It is the Contractor's responsibility to secure participation in the contract scope of work by M/WBEs to satisfy the goals, or to document satisfactory good faith efforts taken to fulfill the goals. Participation is measured as the amount actually paid to the M/WBEs, not the contract bid price for the work. FAILURE TO ATTAIN THESE GOALS MAY RESULT IN THE IMPOSITION OF SANCTIONS. (See Section II.F.1.)

Minority Owned Business Enterprise Participation Goal 10 %

Women-Owned Business Enterprise Participation Goal 5 %

- (B) The Contractor will designate and make known to the Authority an M/WBE Officer who will have the responsibility for and authority to effectively administer an M/WBE Program.

- (C) New York State Directory of Certified Minority and Women-Owned Business Enterprises

For purposes of meeting minority and women-owned business participation goal requirements, the Authority shall provide inspection of the Directory free of charge at the locations where the bid document or request for proposal may be obtained or inspected by all prospective bidders. In addition, prospective bidders on Authority bid solicitations, requests for proposals or negotiations, may access the Empire State Economic Development's Internet version of the M/WBE Directory. The Internet address is www.empire.state.ny.us

For further information contact one of the following locations::

Albany Office (518) 292-5100

Empire State Economic Development
Division of Minority/Women Business Development
625 Broadway
Albany, New York 12245
www.esd.ny.gov/mwbe.html

New York City Office (212) 803-2414

Empire State Economic Development
Division of Minority/Women Business Development
633 3rd Ave., 41st Floor
New York, New York 10036

II. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE POLICY

- (A) It is the policy of the Authority to encourage the greatest possible participation by Minority and Women-Owned Business Enterprises (M/WBEs) in the Authority's procurement process. Therefore, to ensure that M/WBEs are given the maximum practical opportunity to participate, the parties agree, as a condition of this contract, to be bound by the provisions of Section 316 of Article 15-A of the Executive Law, as well as to any other applicable provisions under the law and this Contract. SANCTIONS MAY BE IMPOSED FOR THE CONTRACTOR'S NON-COMPLIANCE.

- (1) Definitions

- (a) **AUTHORITY CONTRACT.** Any written agreement, and amendment(s) thereto, providing for a total expenditure in excess of \$25,000, whereby a State agency is committed to expend or does expend funds in return for labor, services, including legal, financial and other professional services, travel, suppliers, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or A written agreement in excess of \$100,000 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon;
- (b) **BUSINESS ENTERPRISE.** Any entity, including a sole proprietorship, partnership, limited liability partnership, limited liability company or corporation, including not-for-profit corporations, which is authorized to and engages in lawful business transactions in accordance with New York law.
- (c) **CERTIFICATION.** The process conducted by the Empire State Economic Development, Division of Minority and Women's Business Development to verify that a business qualifies for New York State Minority or Women-Owned Business Enterprise status. To initiate the certification process, contact one of the offices listed above.
- (d) **CERTIFIED BUSINESS.** A business enterprise, which has been approved by the Director for minority-owned business enterprise or women-owned business enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women.
- (e) **CONTRACT.**
- (1) A written agreement or purchase order instrument, or amendment thereto, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000), whereby the Authority is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the Authority; or

- (2) A written agreement in excess of one hundred thousand dollars (\$100,000), whereby the Authority is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.
- (f) CONTRACTOR. An individual, a business enterprise including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to an Authority contract, or a bidder in conjunction with the award of an Authority contract or a proposed party to an Authority contract.
- (g) CONTRACT SCOPE OF WORK. For purposes of this section, contract scope of work shall mean:
 - (i) specific tasks required by the contract,
 - (ii) services or products which must be provided to perform specific tasks required by the contract,
 - (iii) components of any overhead costs billed to the Authority pursuant to the contract.
- (h) DAY. A business day unless otherwise specified.
- (i) DIRECTOR. The Director of the Empire State Economic Development, Division of Minority and Women's Business Development.
- (j) DIRECTORY. The directory of certified businesses, prepared by the Director, for use by the Authority and its contractors in complying with the provisions of Executive Law Article 15-A.. Link to NYS directory of certified M/WBE <http://www.esd.ny.gov/mwbe.html>
- (k) EXCLUSION LIST. The exemption of specific classifications of goods/materials or services from all M/WBE requirements. The classifications have been identified by procurement management as offering no procurement opportunities for M/WBEs. Appendix C requirement are not applicable.
- (l) GOAL. A percentage of participation, which is not a set aside or quota, that represents a target toward which the prime contractor must aim in expending good faith efforts to subcontract with or otherwise ensure the commercial involvement of minority and women-owned businesses on specific Authority Contracts.
- (m) JOINT VENTURE. A contractual agreement joining together two or more business enterprises, one of which is a certified minority-or woman-owned business enterprise for the purpose of performing on an Authority contract. The certified minority-or woman-owned business enterprise must provide a percentage of value added services representing an equitable interest in the joint venture. All parties agree to share in the profits and losses of the business endeavor according to their percentage of equitable interest.
- (n) MENTOR-PROTÉGÉ AGREEMENT. A contract between a prime contractor, the "Mentor," and a minority-or women-owned business enterprise, the "Protégé" in which there is a transfer of knowledge, technology, or other resources, which promotes the economic growth of the minority-or women-owned business enterprise or fosters the establishment of a long term business relationship between the parties.
- (o) MINORITY GROUP MEMBER. A United States Citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
 - (1) Black persons having origins in any of the Black African racial groups;
 - (2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
 - (3) Native American or Alaskan native persons having origins in any of the original peoples of North America;
 - (4) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.
- (p) MINORITY-OWNED BUSINESS ENTERPRISE. A business enterprise, including a sole proprietorship, partnership or corporation that is:
 - (1) At least fifty-one percent owned by one or more minority group members;
 - (2) An enterprise in which such minority ownership is real, substantial and continuing;
 - (3) An enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
 - (4) An enterprise authorized to do business in New York State and is independently owned and operated.
 - (5) An enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and
 - (6) An enterprise that is a small business pursuant to this section.
- (q) PERSONAL NET WORTH. The aggregate adjusted net value of the assets of an individual remaining after total liabilities are deducted. Personal net worth includes the individual's share of assets held jointly with said individual's spouse and does not include the individual's ownership in the certified minority and woman-owned business enterprise, the individual's equity in his or her primary residence, or up to five hundred thousand dollars of the present cash value of any qualified retirement savings plan or individual retirement account held by the individual less any penalties for early withdrawal.
- (r) SMALL BUSINESS. A business which has a significant business presence in the State, is independently owned and operated, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the director, but not to exceed three hundred, taking into consideration factors which include, but are not limited to, federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto.
- (s) SUBCONTRACT. Shall mean an agreement in which a portion of a Contractor's obligation under an Authority contract is undertaken or

assumed.

- (t) **UTILIZATION PLAN.** The plan which must be submitted by a Contractor to the Authority, listing minority and women-owned business enterprises which the Contractor intends to use in the performance of the contract, and all components of the contract scope of work which the Contractor intends for minority and women-owned business enterprises to perform.
- (u) **ON-LINE UTILIZATION PLAN SUBMISSION** (For Construction Contractors Only over \$100,000.) – Upon execution of a State contract, for the acquisition, construction, demolition, replacement, major repair or renovation of real property, the construction contractor shall submit their On-line utilization plan to <http://www.nypa.gov/mwbe/default.aspx> within ten (10) days of notice of award to the Authority for approval. Once approved the contractors plan will reside on the Authority's website for a period not to exceed 90 days for public viewing.
- (v) **VERIFICATION.** Any act necessary to determine whether a business enterprise is owned, controlled and operated by minority or women principals. Such acts may include, but are not limited to request(s) for documents in addition to the initial application and inspection of the place of business.
- (w) **WOMEN-OWNED BUSINESS ENTERPRISE.** A business enterprise, including a sole proprietorship, partnership or corporation that is:
 - (1) At least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;
 - (2) An enterprise in which the ownership interest of such women is real, substantial and continuing;
 - (3) An enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
 - (4) An enterprise authorized to do business in New York State and is independently owned and operated.
 - (5) An enterprise owned by an individual, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and
 - (6) An enterprise that is a small business pursuant to subdivision twenty of this section

(B) Contractor's Responsibilities

- (1) The Contractor hereby agrees to carry out this Policy in the awarding of subcontracts. The Contractor further agrees to cooperate in any audits, studies or surveys as may be conducted by the Authority, consultant to the Authority, or any government agency which may have jurisdiction, as may be necessary to determine the extent of Contractor's compliance with this Policy.
- (2) The Contractor will submit with its bid, a Preliminary Subcontracting Plan describing the firm(s) it will utilize to meet its M/WBE goals. The Preliminary Subcontracting Plan Form is annexed hereto as Attachment No. 1. If the Contractor anticipates that it will be unable to meet the goal requirements of this contract, it shall indicate the reasons therefor on the Preliminary Subcontracting Plan Form. Approval of any such firm as a subcontractor and/or an M/WBE on the Authority' contract is solely within the discretion of the Authority.
- (3) The Contractor shall further submit, within 10 days after contract award, a complete Utilization Plan on the annexed Utilization Plan Form (Attachment No.2), which shall reflect the information submitted on the Preliminary Subcontracting Plan, and at a minimum shall contain:
 - (a) the names and federal identification number or social security number of minority and women-owned business enterprises which the Contractor intends to use to perform the Contract.
 - (b) the dollar amount of business with each minority and women-owned business enterprise that the Contractor intends to use to perform the Contract.
 - (c) a description of the contract scope of work which the Contractor intends to have performed by minority and women-owned business enterprises and the dates when such performance will commence and end. If a Utilization Plan is submitted which does not demonstrate that the Contract goal requirements for participation by M/WBE's will be met by the Contractor, the Contractor must complete and submit a Goal Reduction Form (see attachment no.4.)
- (4) The Contractor agrees that its acceptance of the terms of this contract, including the specific goals established for M/WBE participation, constitutes a commitment to make every good faith effort to meet such goals by subcontracting to or purchasing goods and services from M/WBEs.
 - (a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For purposes of this article affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation, and selection for training or retraining including apprenticeship and on-the-job training.
 - (b) At the request of the Authority, the Contractor shall request each employment agency, labor union or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - (c) The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the Authority's contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color national origin, sex, age, disability, or marital status.
- (5) In the event that a Contractor responding to a the Authorities solicitation is a joint venture, teaming agreement, or other similar arrangement that includes a certified minority-and woman-owned business enterprise, such a Contractor must submit the following to the Authority for its review and approval;
 - (a) The name, address, telephone number, and federal identification of each partner or party to the agreement;

- (b) The federal identification number of the joint venture or entity established to respond to the solicitation, if applicable;
 - (c) A copy of the joint venture, teaming agreement, or other similar arrangement, which describes the percentage of interest owned by each party to the agreement and the value added by each party;
 - (d) A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.
- (5) The Contractor will physically include the provisions of (a),(b) and (c) above verbatim in every Subcontract. Except as provided in the following paragraph, the provisions will be binding upon each Subcontractor as to work in connection with this Contract. The requirements of this section (5) shall not apply to any employment outside New York State or applications for employment outside New York State or solicitations or advertisements therefore, or any existing programs of affirmative action regarding employment outside New York State.
- (6) The Contractor shall include in each subcontract, in such a manner that the provisions will be binding upon each subcontractor, provisions requiring Subcontractors to make a good faith effort to solicit active participation by M/WBEs identified in the Directory; and provisions requiring the parties to agree, as a condition of entering into the Subcontract, to be bound by the provisions of Section 316 of Article 15-A of the Executive Law.
- (7) The Contractor shall keep records, cancelled checks and documents for, at least, one (1) year following completion of the contract. These records, and cancelled checks, documents or copies thereof will be made available at reasonable times upon written request by the Authority or any other authorized governmental entity.
- (8) The Contractor shall not use the requirements of this section to discriminate against any qualified company or group of companies.
- (C) Conditions for Satisfying M/WBE Goals
- (1) M/WBE participation in various types of contracts will be counted toward the total contract M/WBE goal, subject to the following conditions:
- (a) Firms certified as both MBE and WBE may count toward either the MBE or WBE goal on a single contract, but not both, regardless of whether either goal is thus exceeded. The Contractor must choose the goal to which the participation value is to be applied at the beginning of the contract.
 - (b) If the Contractor is unable to meet the goals with certified firms by making all of the good faith efforts defined herein, the Contractor shall actively solicit uncertified M/WBEs to satisfy the goals. Uncertified firms will be required to submit an application for certification to the Empire State Economic Development, Division of Minority and Women's Business Development and will be counted as contributing towards the contract goals only after they have been certified. The responsibility for meeting contractual M/WBE Goals remain with the Contractor regardless of whether such uncertified firms are qualified by New York State.
 - (c) Where certified M/WBEs have expressed an interest to the Contractor in performing work that the contractor normally performs with its own forces and the contract scope of work has not been fully performed, good-faith efforts require that the Contractor subcontract such work or portions of it to meet the M/WBE goals.
 - (d) The Contractor must keep records of efforts to utilize certified M/WBEs including:
 - (1) The firm's name, address and telephone number.
 - (2) A description of the information provided to the M/WBE.
 - (3) A written explanation of why an agreement with the M/WBE was not obtained.
 - (e) Price alone will not be an acceptable basis for rejecting M/WBE bids if any of the bids are reasonable.
 - (f) The Authority reserves the right to reject any firm as counting toward meeting the Contractor's M/WBE goal if, in the opinion of the Authority, the facts as to that firm's business and technical organization and practices justify the rejection.

(D) Good-Faith Efforts

To satisfy the M/WBE participation requirements, the Contractor must (at a minimum) make the following good-faith efforts and must prove all such efforts through the submission of written documented evidence. The Authority may consider any criteria it determines is relevant, including, but not limited to:

- (1) A completed, acceptable Utilization Plan submitted in accordance with applicable requirements to meet goals established in the contract for participation of minority and women-owned business enterprises.
- (2) Copies of any advertisements published in appropriate general circulation, trade and minority and women-oriented publications in a timely fashion or at least 20 days before bids are due together with the listings(s) and date(s) of the publication of such advertising..
- (3) Copies of any written solicitations made in a timely fashion to minority and women-owned business enterprises listed in the Directory. If solicitations were received but a certified minority-or woman-owned enterprise was not selected, the specific reason that such enterprise was not selected.
- (4) Timely responses made to any such advertisements and solicitations provided by minority and women-owned business enterprises.

- (5) The dates of attendance by a representative of the Contractor who is knowledgeable of the contract scope of work at pre-bid, pre-award, or any meeting scheduled by the Authority for any purpose relating to the Supplier Diversity Program.
- (6) Written notification to M/WBE firms and trade associations located within the region where the contract scope of work will be performed.
- (7) Description of efforts by the Contractor to reasonably structure the contract scope of work for purposes of subcontracting with, or obtaining supplies from, certified minority and women-owned business enterprises.
- (8) Actions to contact and assess the capabilities of minority and women-owned business enterprises located both inside and outside of the immediate region in which the work was or will be performed.
- (9) Providing to M/WBE's in a timely fashion relevant plans, specifications or terms and conditions of the contract, necessary to prepare an informed response to a Contractor's solicitation.
- (10) Subcontract terms and conditions offered to minority and women-owned business enterprises, comparable to those offered in the ordinary course of the contractor's business and to other subcontractors of the contractor.
- (11) Proof that the contractor made payments for work performed by minority and women-owned business enterprises in timely fashion so as to facilitate continued performance by minority or women-owned business enterprises.
- (12) The Contractor's offer to make up any inability to comply with goals established in the contract, in other Authority contracts being performed or to be awarded to the Contractor.
- (13) Documented evidence that the Contractor has contacted all M/WBEs who have expressed an interest in the specific contract.

(E) GOAL REDUCTIONS

The Authority shall consider a partial reduction of goal requirements only upon the submission of a written request for a goal reduction (see Attachment No. 4) and documented good faith efforts from the Contractor and consideration of the following factors:

- (1) The number and types of certified minority or women-owned business enterprises in the region in which the work is to be performed;
 - (2) The total dollar value of the contract;
 - (3) The scope of work to be performed;
 - (4) The project size;
 - (5) The project term;
 - (6) The availability of other business enterprises located in the region; and
 - (7) The ability of certified minority and women-owned business enterprises located outside the region to perform the work.
- The Contractor must show that it has exhausted all reasonable means and demonstrated good faith efforts to meet the goal prior to the submission of a request for a goal reduction. The submission of the Goal Reduction Form does not automatically constitute the Authority's agreement to the reduction and in no way releases the contractor from the M/WBE goal requirement. Requests for a reduction of goal requirements may be made simultaneously with the submission of the Utilization Plan for that contract. If a Contractor is otherwise disqualified by the Authority, the request for a reduction shall be deemed to be moot.
- Requests for a reduction subsequent to award of contract may only be made prior to final payment on that contract.
- The Reduction Form is annexed hereto as Attachment No. 4.

(F) Contractor's Failure to Comply - Sanctions

- (1) **WHERE THE AUTHORITY DISQUALIFIES A BID OR PROPOSAL OF A CONTRACTOR AS BEING NON-RESPONSIBLE FOR FAILURE TO REMEDY DEFICIENCIES IN THE UTILIZATION PLAN, OR UPON A DETERMINATION THAT THE CONTRACTOR'S UTILIZATION PLAN DOES NOT INDICATE THAT THE CONTRACT GOAL REQUIREMENTS FOR PARTICIPATION OF M/WBE'S WILL BE MET AND THE CONTRACTOR HAS NOT DOCUMENTED GOOD-FAITH EFFORTS, THE AUTHORITY, IN ITS DISCRETION, MAY AWARD THE CONTRACT TO THE NEXT LOWER RESPONSIBLE CONTRACTOR OR TO THE NEXT MOST TECHNICALLY QUALIFIED OR OTHERWISE ACCEPTABLE CONTRACTOR, NOTWITHSTANDING THAT THE DISQUALIFIED CONTRACTOR PURSUES ANY REMEDIES AVAILABLE TO IT PURSUANT TO ARTICLE 15-A OF THE EXECUTIVE LAW OR OTHERWISE.**
- (2) If the Authority determines that the Contractor has not fulfilled its M/WBE obligations, the Authority will send a notice to the Contractor requesting that the Contractor provide in writing, within a reasonable time as stated by the Authority, the necessary evidence of good faith efforts. If the Contractor fails to objectively demonstrate the required good-faith efforts, the Authority shall determine the Contractor to be in non-compliance and will so notify the Director and the Contractor in writing.
- (3) Whenever all efforts to effect compliance have failed and the necessary good faith efforts have not been demonstrated, the Authority may take the following actions:
 - (a) Reduction of the amount obligated for expenditure pursuant to the contract.
 - (b) Suspension or termination of the contract.
 - (c) Retention of payments until compliance with the contract goal requirements.
 - (d) Bid Forfeiture.
 - (e) Bar the Contractor from eligibility for award of other Authority contracts for a specific amount of time or until corrective action has been taken. The determination of what corrective action is acceptable is solely within the discretion of the Authority.
 - (f) **ASSESSMENT OF LIQUIDATED DAMAGES, AS A SANCTION AND NOT AS A PENALTY, AS MAY BE PROVIDED IN THE**

AUTHORITY'S CONTRACT WITH THE CONTRACTOR.

(g) ANY OTHER PENALTIES WHICH ARE AUTHORIZED BY LAW.

(G) Submittals and Reports

- (1) As a part of its proposal the contractor shall submit its Preliminary Subcontracting Plan for implementation of the foregoing requirements with respect to minority and women-owned businesses. The Contractor's proposed plan must be submitted on the Authority provided "Preliminary Subcontracting Plan Form," annexed hereto as Attachment No. 1.
- (2) The Authority will review and evaluate the Preliminary Subcontracting Plan submitted by a Contractor.
- (3) The Contractor shall be further required to submit, within 10 days after contract award, a complete M/WBE Utilization Plan on the Authority provided M/WBE Utilization Plan Form, annexed hereto as Attachment No. 2. The Authority will review the Utilization Plan and will issue a written notice of acceptance or deficiency within ten (10) calendar days after receipt of the M/WBE Utilization Plan.
- (4) The Contractor must provide a written response to a Notice of Deficiency within five (5) days. If the Contractor's response is inadequate or not provided in a timely manner, the Authority will so notify the contractor and require the contractor to submit a goal reduction form within five (5) days. Failure to file the Goal Reduction Form in a timely manner may be grounds for disqualification of the bid.
- (5) The Contractor shall submit monthly compliance reports regarding its M/WBE utilization activity on the Authority provided Compliance Report Form, annexed hereto as Attachment No. 3. Reports are due on the first business day of each month, beginning 30 days after contract award.
- (6) The Authority will conduct compliance reviews for determination of the Contractor's performance relative to meeting the specified M/WBE goal. This may include an audit or review of all material, documents, reports and correspondence pertaining to the Contractor's efforts towards satisfying the goals plus on-site reviews to include interviews and inspection of any documentary material relevant to the Contractor's performance which were not available for review during the audit.
- (7) The determination of the Contractor's compliance efforts is the Authority's responsibility. The contractor will fully cooperate to assist the Authority in this endeavor.

(H) Limitations of Awards Available under Executive Law Article 15-A

In the event a complaint against the Authority is referred to the American Arbitration Association for resolution in accordance with Section 316 of the Executive Law, the parties agree that the Arbitrator will have no jurisdiction to award monetary damages, fines or other monetary penalties against the Authority. The parties further agree that each party will bear its own legal fees and expenses, regardless of the outcome of the Arbitration.

PRELIMINARY SUBCONTRACTING FORM

**NEW YORK POWER AUTHORITY
SUPPLIER DIVERSITY PROGRAM (SDP)
PRELIMINARY SUBCONTRACTING FORM
REQUEST FOR QUOTATION (RFQ) NO. _____**

Please provide the following information:

Date: _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. (____) _____

Federal ID # _____

Contract Award Amount \$ _____

Brief Description of Work _____

- II. I, (_____) HEREBY AGREE TO THE _____ 10% MINORITY OWNED BUSINESS ENTERPRISE (MBE) GOAL AND THE _____ 5% WOMEN OWNED BUSINESS ENTERPRISE (WBE) GOAL AS SET FORTH IN THIS CONTRACT NO. _____. I FURTHER SUBMIT THE FOLLOWING NEW YORK STATE CERTIFIED M/WBEs FOR YOUR REVIEW AND APPROVAL IN COMPLIANCE WITH THE UTILIZATION GOAL REQUIREMENTS ESTABLISHED IN THIS CONTRACT.

SIGNATURE AND TITLE OF
AUTHORIZED REPRESENTATIVE

III. MINORITY BUSINESS ENTERPRISE SUBMISSIONS

	COMPANY NAME ADDRESS TELEPHONE FEDERAL ID CONTACT'S NAME	ESTIMATED CONTRACT AWARD DATE	CONTRACT AWARD AMOUNT (\$)	ESTIMATED CONTRACT COMMENCEMENT DATE	CONTRACT SCOPE OF WORK (brief)
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____

IV. WOMEN OWNED BUSINESS ENTERPRISE SUBMISSIONS

	COMPANY NAME ADDRESS TELEPHONE FEDERAL ID CONTACT'S NAME	ESTIMATED CONTRACT AWARD DATE	CONTRACT AWARD AMOUNT (\$)	ESTIMATED CONTRACT COMMENCEMENT DATE	CONTRACT SCOPE OF WORK (brief)
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____

- V. Provide the name, title, address and telephone of person(s) responsible for implementing this subcontracting plan.

- VI. If the Contractor anticipates that it will not be able to meet the contract goals, a written detailed explanation must be submitted with the bid or proposal.

I hereby declare that the above information if to the best of my ability and intention correct and that every effort will be made in the attainment of my M/WBE Goal.

Name _____

Title _____

Date_____

NEW YORK POWER AUTHORITY
SUPPLIER DIVERSITY PROGRAM (SDP)
UTILIZATION PLAN FORM
CONTRACT NO. _____

Please provide the following information:

Date: _____

I. **PRIME CONTRACTOR INFORMATION**

Company Name _____

Address _____

Telephone No. (____) _____

Federal ID # _____

Contract Award Amount \$ _____

Brief Description of Work _____

- II. I, (_____) DO HEREBY AGREE TO MEET THE _____ 10% MBE AND THE _____ 50% WBE UTILIZATION GOALS. FURTHERMORE, I SUBMIT THE FOLLOWING NEW YORK STATE CERTIFIED M/WBEs FOR YOUR REVIEW AND APPROVAL IN COMPLIANCE WITH THE M/WBE UTILIZATION GOALS SET FORTH IN THIS CONTRACT NO. _____.

SIGNATURE AND TITLE OF
AUTHORIZED REPRESENTATIVEIII. **MINORITY BUSINESS ENTERPRISE SUBMISSIONS**

	COMPANY'S NAME ADDRESS TELEPHONE FEDERAL ID CONTACT'S NAME	CONTRACT AWARD DATE	CONTRACT AWARD AMOUNT (\$)	CONTRACT COMMENCEMENT AND COMPLETION DATES	CONTRACT SCOPE OF WORK (brief)
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____

IV. **WOMEN OWNED BUSINESS ENTERPRISE SUBMISSIONS**

	COMPANY'S NAME ADDRESS TELEPHONE FEDERAL ID CONTACT'S NAME	CONTRACT AWARD DATE	CONTRACT AWARD AMOUNT (\$)	CONTRACT COMMENCEMENT AND COMPLETION DATES	CONTRACT SCOPE OF WORK (brief)
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____

- V. Provide the name, title, address and telephone number of person(s) responsible for implementing this utilization plan.

- VI. If the Contractor anticipates that it will not be able to meet the contract goals, a written detailed explanation must be submitted via the Goal Reduction Form (see Attachment No. 4).

I hereby declare that the above information is to the best of my ability and intention correct and that every effort will be made in the attainment of my M/WBE Goal.

Name _____

Title _____

Date _____

NEW YORK POWER AUTHORITY
SUPPLIER DIVERSITY PROGRAM (SDP)
CONTRACT COMPLIANCE REPORT
CONTRACT NO. _____

Please provide the following information:

Date: _____

I. **PRIME CONTRACTOR INFORMATION**

Company Name _____

Address _____

Telephone No. ____ (____) _____

Federal ID # _____

Contract Award Amount \$ _____

Brief Description of Work _____

- II. AS EVIDENCE OF (_____) PROGRESS TOWARD ACHIEVEMENT OF THE MBE AND WBE GOALS, AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF CONTRACT NO. _____, THE FOLLOWING INFORMATION IS HEREWITH SUBMITTED.

SIGNATURE AND TITLE OF
AUTHORIZED REPRESENTATIVE

III. **SUBMITTAL ITEMS**

- i. Provide the names, addresses and telephone numbers of each certified minority/woman owned business enterprise you are actually using in compliance with your utilization goal.
- ii. Provide a brief description of work performed by the M/WBE, their scheduled dates for performance and current working status.
- iii. Provide a copy of your written agreement with the M/WBE. (A one time request).
- iv. In the event you have let a blanket purchase order or other open-ended contracts, only specify that amount actually awarded.
- v. Provide the actual amounts of payments made to any M/WBEs as of the date the compliance report is submitted. Documentation must include copies of cancelled checks.
- vi. Provide the name, title and telephone number of person(s) responsible for submitting compliance reports.
- vii. Compliance Reports are due on the first day of each month, beginning thirty (30) days after contract award date.

INFORMATION ON THIS FORM IS REQUIRED ON A MONTHLY BASIS FOR AS LONG AS THE CONTRACT IS IN EFFECT OR UNTIL THE M/WBE GOALS HAVE BEEN SATISFIED.

NEW YORK POWER AUTHORITY
SUPPLIER DIVERSITY PROGRAM (SDP)
CONTRACT NO. _____

Please provide the following information:

Date: _____

I. **PRIME CONTRACTOR INFORMATION**

Company Name _____

Address _____

Telephone No. () _____

Federal ID # _____

Contract Award Amount \$ _____

Brief Description of Work _____

- II. I, () HEREBY REQUEST A PARTIAL OR TOTAL (Circle One) REDUCTION OF MY MBE AND/OR WBE GOALS AS ESTABLISHED IN CONTRACT NO. . I will attain 10% MBE PARTICIPATION AND 5% WBE PARTICIPATION OF THE TOTAL CONTRACT PRICE.

TO SUBSTANTIATE AND DEMONSTRATE MY GOOD FAITH EFFORTS, THE FOLLOWING INFORMATION IS SUBMITTED FOR THE AUTHORITY'S REVIEW AND APPROVAL.

SIGNATURE AND TITLE OF
AUTHORIZED REPRESENTATIVE

III. **SUBMITTAL ITEMS**

1. Provide a statement setting forth your basis for requesting a partial or total reduction.
2. Provide all names of general circulation, trade association and minority and women-oriented publications in which you solicited M/WBEs for the purposes of complying with your general requirements.
3. List all dates solicitations for M/WBE participation were published in any of the above publications.
4. List all M/WBEs appearing in the New York State Directory of certified vendors which were solicited for purposes of complying with your M/WBE utilization goal.
5. Provide proof of all dates on which solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitations if an identical solicitation was made to all M/WBEs.
6. Provide copies of responses made by M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans or specifications made available to M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Contractor, and M/WBEs undertaken for purposes of complying with your M/WBE goal requirements.
9. Provide any other information you deem relevant, which may help us in evaluating your request for a goal reduction.
10. Provide the name, title, address and telephone number of contractor's representative authorized to discuss and negotiate

this goal reduction request.

**NEW YORK POWER AUTHORITY
SUPPLIER DIVERSITY PROGRAM (SDP)
CONTRACT NO. _____**

This information is required **ONLY** from the **Prime Construction Contractor awarded** an NYPA construction contract valued at \$100,000 or greater. The Prime Construction Contractor **must** post its Utilization Plans on the following NYPA website within ten (10) days of Notice of Award for Authority approval. Once approved, the plan will reside on the NYPA website for a period not to exceed ninety (90) days for public viewing.

WEBSITE POSTING ADDRESS: WWW, <http://www.nypa.gov/mwbe/default.aspx>

In addition to posting the information required above, please complete and submit a hard copy of your completed Utilization Form and send it, within 10 days of notice of award, to Ms. Yves-Rose Valbrun at:

Yves.valbrun@nypa.gov **OR** Fax it to (914) 681-6783

For any questions regarding this please contact Ms. Valbrun at (914) 681-6453 or contact Ms. Debra White at (914) 681-6976

NYPA ACCESS AUTHORIZATION - BACKGROUND SCREENING PROGRAM

1.0 SCOPE

Provided to Contractors¹ in the initial contract, documents required to be completed and submitted to NYPA's investigative vendor (CARCO) in order for Contractor personnel to be granted unescorted, or in some cases escorted access, to NYPA facilities.

2.0 APPLICABILITY

Applies to Contractor personnel seeking unescorted access to NYPA facilities protected areas (fenced in areas of plants, switchyards, inside corporate buildings/offices, ect.) and establishes standards regarding the escorting of such non-NYPA personnel. Contractor personnel performing work outside of NYPA protected areas does not need to comply with the standards established in this procedure unless NYPA Management requires such on a case by case basis.

The North American Electric Reliability Corporation (NERC) created security standards for Critical Infrastructure Protection (CIP) to provide a cyber security framework for the identification and protection of the Bulk Power System. Contractor personnel requiring access to certain restricted areas of the plant known as Critical Cyber Asset (CCA) areas shall adhere to standards which have been incorporated into this procedure as required.

Note: Nothing in this procedure shall preclude the escort of an individual who has been approved through the background screening process, when necessary or at the discretion of the NYPA department responsible for that individual.

3.0 ATTACHMENTS

Appendix D An attachment to this procedure that will be given to each Contractor. The appendix describes the procedures Contractors and their personnel shall follow in order to be granted unescorted access to NYPA facilities.

Attachment I Provided to Contractors in the initial contract. This document shall be completed and submitted by individual Contractor personnel to NYPA's investigative vendor (CARCO) in order to be granted unescorted access to NYPA facilities.

Attachment II Used by Contractor personnel to notify NYPA Corporate/Site Security that unescorted access to NYPA facilities is no longer needed and shall be canceled.

¹ Party bound by contract with NYPA (including independent subcontractors)

Attachment III Escort responsibility tag. Issued non photo tag to persons escorted.

Appendix I Appendix I (not attached but related to this procedure) which describes training requirements that Contractor personnel shall follow in order to be granted unescorted access to NYPA facilities. Along with Appendix D, this appendix can be found in all issued NYPA contracts.

4.0 PROCEDURES

4.1 General

Contractors and their personnel desiring unescorted access to NYPA facilities shall comply with all procedures established in Appendix's D & I. Contractors will ensure that Contractor Personnel complete Attachment I and submits it to CARCO. It is preferred that all those that apply for unescorted access to CARCO use the CARCO web as this process shall save time in processing vs. faxing information. The web process is also less expensive and NYPA Management needs to encourage its usage for this reason as well. Corporate/Site Security shall assist Contractor's and/or their personnel with any technical guidance regarding the submittal to CARCO. Only Corporate Security shall permit an exception from the use of CARCO (e.g. governmental agencies.)

Barred Contractor List: Corporate Security maintains a computerized list of Contractor Personnel who are barred from access (escorted or unescorted) to any NYPA facility. Corporate/Site Security shall check the Barred Contractor List to ensure that granting access is not prohibited.

Any adverse findings against Contractor personnel discovered by CARCO in performing a background screening criminal check shall be brought immediately to Corporate Security. Circumstances defined to CARCO by NYPA which would warrant an adverse findings alert include: Any criminal charge/open warrant/pending prosecution charge (unresolved criminal charge pending) within the last seven years, unable to conduct a complete seven year criminal history check going back to age eighteen, inability to verify identity – not able to verify supplied social security # (US/Canada) or Interpol check to verify identity, or social security # issued within last seven years. Corporate Security is the only business unit that may allow unescorted access to Contractor personnel with an adverse finding. An individual may dispute the initial adverse finding through the submittal of any relevant information and documentation pursuant to the Fair Credit Reporting Act as amended ("FCRA"), 15 U.S.C. 1681 *et seq.* (see *attachment V*) and applicable state law (New York Correction Law Article 23-A-see *attachment IV*). Corporate Security will review that submittal and shall advise the affected individual, the relevant NYPA program manager, and Procurement of the decision rendered but will only discuss personal details when necessary

with individual involved and relevant NYPA management review team (Corporate Security, Management Leadership, and Legal).

The identity of any person given unescorted access will be verified and a written record will be maintained including name, company, badge number, access dates, and areas for which access is granted. Additional approvals are required for all CCA access requests. All records pertaining to the requirements of this procedure must be maintained for a period of three years.

4.2 Emergency Access

If emergency access is needed to any NYPA facility, temporary access may be granted by Corporate/Site Security. Any Contractor personnel granted emergency access shall be escorted for the entire period on-site and entry to NERC regulated CCA areas shall be logged into each CCA area and person escorted shall swipe badge prior to escorting person for each entry into a CCA area to show they are being escorted. Site Security approvals shall be directed to Corporate Security for approval as soon as practical. Persons allowed emergency access shall have proper personal identification prior to site entry and comply with Appendix D & I standards if continued access to NYPA site is anticipated.

4.3 Escorts (Limited Access)

Certain limited circumstances will warrant the use of escorts. They include, but are not limited to, human resource interviews, approved plant tours (allowed areas to be determined prior to tour), emergency services training, CCA approved access to not only persons with Attachment III escort tags, but also persons with unescorted access badges (photo or non-photo) that are not cleared for weekly CCA access need and vendor deliveries. Vendors making deliveries may be escorted by security, approved Contractor personnel, or appropriate NYPA employees. Security will determine the best site access point to ensure the shortest, safest route to the destination is followed. Anyone who has not been background screened shall not be given access to NYPA computers or given other NYPA information that involves plant safety, NERC CIP "Restricted & Restricted - Confidential" information, or security systems. Escorts shall not be approved in order to avoid the requirement to perform background screening for Contractors requesting unescorted access for their employees to NYPA facilities. Corporate/Site Security shall approve or deny all requests for escorted access with the exception of CCA access which is a shared responsibility by both escort and site security. All escorted persons shall wear a non-photo escort tag (see Attachment III). The tag shall be completed prior to issuance and shall contain the escorted person's name, company, day of escort, and signature of escort. The escort shall be within line of sight and shall be escorted for the entire period on site and entry to NERC regulated CCA areas shall be logged into each CCA area and person escorted shall swipe badge prior to escorting person for each entry into a CCA area to

show they are being escorted. Those performing escort duty to NERC regulated CCA's will not allow the escort person to physically touch CCA equipment. If NYPA or Contractor personnel is providing the escort and the escort needs to be changed, only another approved employee of either NYPA or a Contractor can provide such escort. The new escort shall also sign the escort tag. Escorted persons shall return the escort tag at the end of that work day to NYPA Corporate/Site Security. Escort tags shall be displayed on the person unless certain work conditions warrant the need to wear the tag inside clothing (e.g. safety concerns). The escort ratios/rules are subject to and shall not exceed the following:

- One (1) person shall not escort more than five (5) persons at one time.
- Person escorted shall not be granted access for more than 5 days in a calendar year (per site) unless the Appendix D paperwork has been submitted to CARCO.
- Person(s) to be escorted shall not be on the Corporate Security's Barred Contractor List.
- Escorts will sign Attachment III and comply with the requirements stated therein.
- Contractor personnel may provide escort immediately if their own background checks have been completed and escort has been approved by NYPA Corporate/Site Security.
- A violation of any section of this policy can result in the escort privilege being denied.

4.4 **Special Exception Access:**

Circumstances may warrant the need to permit either escorted/unescorted access to NYPA facilities on rare occasion to a person unable to comply with background screening standards established. This can occur because certain foreign nations do not release personal records of an individual and/or the background is not able to be completed for the required 7 year period.

In these cases a person shall be determined to have a need to support an essential function at NYPA and NYPA senior management shall present this matter to Corporate Security and request an exception. Only Corporate Security can approve such requests. Every effort shall be made to have this person escorted, logged into all CCA areas, and to limit their time working under such exception.

If granted exception, such person shall still comply with all other requirements such as Appendix D, Item 5.2, "Identification Badge Requirements" of this procedure. If a partial background (not complete 7 year history) screening history can be completed on a person, it shall be performed. If there are any adverse findings developed, Corporate Security shall make a determination if access should be granted.

A person who does not successfully complete the background screening process, where a complete background screening cannot be performed, shall be restricted from NYPA computers and sensitive information to the extent possible.

Michael Leonard
Corporate Security Manager

APPENDIX D
Independent Contractor's Portion of Procedure
NYPA ACCESS AUTHORIZATION - BACKGROUND SCREENING SECURITY PROGRAM

1.0 PURPOSE

To provide a step-by-step process for Contractor¹ personnel² requiring escorted or unescorted access to New York Power Authority ("NYPA") facilities in order to comply with NYPA standards outlined in the current Corporate Security (CS) policy 2.0 – NYPA ACCESS AUTHORIZATION- BACKGROUND SCREENING SECURITY PROGRAM.

2.0 APPLICABILITY

All Contractors and their personnel shall comply with the background screening requirements listed. Contractor personnel who are required to have access to NYPA's Critical Cyber Assets (CCA'S) shall comply with North American Electric Reliability Corporation Critical Infrastructure Protection (NERC CIP) requirements. Failure to comply can result in unescorted access denial.

3.0 RETURN TO WORK

When Contractor personnel who have undergone background screening interrupts their continuous unescorted status at NYPA and returns after **365** days from a break in status, the individual(s) shall have a criminal record check performed for the period of time between the break in service and the return date. Contractor personnel shall not be allowed to have unescorted access until criminal records are received and cleared.

4.0 PROCEDURES

4.1 General

Once a contract is awarded, Contractor shall receive an on line notification (fax if on line is not available to Contractor) from CARCO advising them to record information concerning their employee data information (see attachment I). Contractor shall then be expected to have their employees complete Attachment I document for each of their employees who will be entering a NYPA protected

¹ The party bound by the terms of the contract with NYPA.

² Contractor personnel: the Contractor's employees who perform work at NYPA. It is understood and agreed by the Contractor that Contractor personnel are not in an employee and employer relationship with NYPA. Accordingly, in the performance of this Agreement, Contractor personnel are independent of NYPA and NYPA has no obligation under State or Federal laws to Contractor personnel. NYPA's total commitment and liability under this Agreement is Contractor's fee and expenses limited as described in the Agreement.

area (fenced in areas of plant, substation, inside NYPA corporate buildings/offices, ect.) and directly supporting work project. Contractor's need to exercise restraint not to add too many of their employees' names for request of access if not warranted.

Attachment I Requirements:

- Country of legal citizenship shall be listed. If living less than 7 last years in Country of citizenship list on Attachment I, all countries the Contractor's employee(s) has lived in for the past 7 years.
- U.S. and Canadian citizens shall list social security (insurance) numbers.
- Check off all NYPA sites access requested for and length of time access is required.
- List the NYPA Employee Name (point of contact - POC) and Department that can be contacted when the background is completed.
- Attachment I shall be sent to CARCO Group Inc. All information shall be legible and accurate. Failure to complete Attachment I completely along with listing POC name can increase processing timeframe.

ALL background screening shall be performed by:

CARCO Group Inc.
5000 Corporate Court, Suite 203
Holtsville, NY 11742
1-800-969-2272 ext. 448
Attention: Linda Wendolowski
email: lwendolowski@carcogroup.com

CARCO is the only background screening company approved by NYPA. Background screenings performed by any company other than CARCO, shall not be accepted. All costs associated with the background screening shall be paid by NYPA.

The Contractor shall contact CARCO (by preferred on-line process supplied) and arrange to submit completed Attachment I forms for each of their employees that they are requesting unescorted access. CARCO shall advise NYPA when they have received the paperwork and are beginning to perform the background screening process.

It is the responsibility of the Contractor to notify CARCO and submit all required documents at least 30 days prior to their employees anticipated start date in order to avoid possible delays in gaining unescorted access to NYPA sites. The

Contractor shall keep NYPA Corporate/ Site Security advised of any problems in submitting required documents to CARCO.

Only NYPA Corporate/ Site Security is authorized to contact CARCO regarding the results of background screening.

Since certain foreign countries do not participate with releasing information, a denial to grant unescorted access may occur. Independent Contractors shall be notified if such denial occurs. NYPA shall evaluate possible access options and advise the Contractor.

Questions from the Contractor concerning site access requirements shall be addressed to the specific site listed below:

NYPA FACILITY	CONTACT NUMBER
Corporate Offices – White Plains / Albany	914-681-6828
Blenheim-Gilboa (B-G)	518-287-6000 ext.0

Clark Energy Center (CEC)	315-724-8186 ext. 0
Poletti (POL)/Flynn (HOL)/Combustion Turbine (CT)	718-626-8299
St. Lawrence (STL)	315-764-0229 ext.282
Niagara (NIA)	716-286-6705

4.2 Identification Badge Requirements

One form of personal photo identification (ID) shall be required prior to an individual being issued a badge. Photo ID can include: an unexpired state issued driver's license, an unexpired passport or passport card, a permanent resident card (green card), or an unexpired employment authorization document that includes a photograph, also Federal/State/Local governmental issued law enforcement/regulatory identification. If no photo ID is available then two forms of ID shall be required. They may include any above mentioned ID that is non-photo or include the following: a state issued birth certificate, a social security card, a credit card, DD214 military document, valid non-photo state issued drivers license/permit or DMV issued identity card or school ID card. Any questions concerning the acceptance of any form of identification shall be discussed prior to granted entry with Corporate Security.

Proper identification shall be carried by Contractor personnel when on NYPA facilities. Upon issuance of the NYPA I.D. Badge, it shall be worn and displayed at all times while on NYPA property.

4.3 Compliance with the Immigration Reform and Control Act (IRCA)

It is the Contractor's responsibility to properly complete and retain Form I-9 for all of its employees assigned to perform contract work at any one of NYPA's facilities, projects, and properties.

The Contractor understands, and is in compliance with, its obligations under IRCA.

The Contractor warrants that it is not knowingly employing any workers assigned to NYPA who are not authorized to work for the Contractor in the United States.

The Contractor agrees to defend and indemnify NYPA for any liability arising out of claims that the Contractor's employees are not authorized to work in the United States for the Contractor and/or any claims based upon alleged IRCA violations committed by the Contractor or Contractor personnel.

4.4 Termination

Attachment II form shall be completed by a NYPA representative that is in charge of monitoring the performance of the contract work when unescorted access is no longer required by Contractor personnel. Immediate (within a 24 hour period) notification shall be made to Corporate/Site Security whenever any contractual relationship is either terminated, Contractor personnel are removed from a NYPA job location for any reason, or access to NERC CIP CCA areas is no longer needed. The NYPA representative that is monitoring the contract work shall hand in completed Attachment III- Escort Badge and all terminated badges to NYPA Corporate/Site Security when the Contractor's employees are no longer needed.

Michael Leonard
Corporate Security Manager



CORPORATE SECURITY

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**ATTACHMENT I
NYPA ACCESS AUTHORIZATION - BACKGROUND SCREENING SECURITY PROGRAM
CONTRACTOR PERSONNEL SCREENING
DATA ENTRY COVER SHEET**

Completed Form shall be submitted to CARCO 30 Days PRIOR to requested site entry

To: <u>CARCO Group Inc.</u>	Date: _____
e-mail _____	# of pages including this sheet: _____
(FAX #) <u>(631) 584-7094</u>	
From: _____	
Company Name: _____	
Address: _____	
Phone #: _____	

Contractor Personnel Name: _____	
Current Home Address: _____	
Previous Home Address: _____ (If less than 7 years at current address)	
Previous Home Address: _____	
Previous Home Address: _____	
Social Security Number: _____	Home Phone #: _____
Driver License #: _____	State: _____ Date of Birth: _____
Country of Citizenship: _____ (If under 7 Yrs. List :) <input type="checkbox"/> United States <input type="checkbox"/> Canada <input type="checkbox"/> Other (specify:)	
Employment Access Dates are requested from: _____ to _____	

Check off all NYPA facilities Contractor personnel are intended/requested to work:

NYPA Employee Contact Name _____
(will contact person listed when background is completed)



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- | | | |
|--|--|--|
| <input type="checkbox"/> Albany Headquarters | <input type="checkbox"/> White Plains Headquarters | <input type="checkbox"/> Blenheim-Gilboa (B-G) |
| <input type="checkbox"/> Clark Energy Center (CEC) | <input type="checkbox"/> Combustible Turbine (CT) | <input type="checkbox"/> Flynn (HOL) |
| <input type="checkbox"/> Niagara (NIA) | <input type="checkbox"/> Poletti (POL) | <input type="checkbox"/> St. Lawrence (STL) |
| Other _____ | | |

Check (✓) Appropriate Box

☐ **US Package – US Citizen**

- Social Security Number Trace (United States Citizens)
- Criminal History Record Search – Felonies and Misdemeanors, based on provided and developed names and residential addresses for 7 years.

☐ **Canadian Package – Canadian Citizens**

- Canadian Criminal Search – based on current address
- Canadian Social Insurance Number Check
- Interscan (includes Interpol, US Dept of Commerce, and Treasury searches) (Non-US citizens only)

☐ **Foreign National Package – Foreign Nationals (other than Canadian Citizens):**

List Country(s) of Origin: _____

- Interscan (includes Interpol, US Dept of Commerce, and Treasury searches) (Non-US citizens only)
- Multi-state criminal check, felony/misdemeanor

NOTE: Most Foreign Nations do not participate with Interscan. Unescorted Access shall not be granted unless Interscan report received is complete for entire search period requested.

I request unescorted access to perform authorized work at the New York Power Authority ("NYPA"). I certify that I have read NYPA's Access Authorization C.S. 2.0 Appendix D Procedure. I shall comply and assist NYPA/CARCO in any assistance needed.

In connection with my request for unescorted access at NYPA, I understand that a consumer report, as that term is defined in the Federal Fair Credit Reporting Act as amended ("FCRA"), 15 U.S.C. 1681 *et seq.* and applicable state law, may be obtained by NYPA from a consumer reporting agency.

I hereby authorize NYPA now, or at any time while I am performing contract work at NYPA, to obtain a consumer report on me that is limited to a seven-year criminal background check and verification of my identity through a Social Security number trace.

Privacy Laws Notification: Section 94 (1) (d) of the NY Public Officers Law requires this notice to be provided when collecting personal information from any individual requesting unescorted access to NYPA facilities. This information is requested pursuant to Article 5, Title 1 of the Public Authorities Law. The principal purpose for which the information is collected is for background screening for those requesting unescorted access to NYPA facilities in accordance with Section 96 (1) of the Personal Privacy Protection Law, particularly subdivisions (b), (e) and (f). Failure to provide the requested information may result in denial of unescorted access to NYPA facilities. This information shall be maintained by NYPA Corporate



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Security (CS) at NYPA located at 123 Main Street, White Plains NY 10601 (914) 681-6200 or when appropriate, at one of NYPA's various facilities. I understand if I disagree with the accuracy of any information in the report, I shall notify NYPA Corporate/Site security within five business days of my receipt of information. If I notify NYPA Corporate/Site security within five business days of the receipt of the report that I am challenging the information, NYPA may delay making a final decision on my unescorted access status until I have had a reasonable opportunity to address information contained in the report.

It is understood that upon my discharge, voluntary resignation, or transfer to a position where unescorted access authorization is no longer required, NYPA shall be notified in writing (utilizing Attachment II Revocation of Access form) immediately so that I may be removed from the unescorted access list. It is understood that I shall return my access badge immediately to NYPA when unescorted access is no longer required.

I hereby certify that all statements I have made in connection with this request are true and that I have not withheld any pertinent information. I understand that any falsification or willful misrepresentation can result in denial of access to NYPA facilities and premises and possible reimbursement to NYPA for any and all costs associated with conducting the background screening process.

Print Contractor Personnel Name

Contractor Personnel Signature

Date

*Maintain completed document for a period of three (3) years.



ATTACHMENT II

**NYPA ACCESS AUTHORIZATION - BACKGROUND SCREENING SECURITY PROGRAM
REVOCATION OF ACCESS FORM**

Company _____ Effective Date: _____

NYPA Locations: ☐ Albany Headquarters ☐ Blenheim-Gilboa (B-G) ☐ Clark Energy Center (CEC)
☐ Combustible Turbine ☐ Flynn (HOL) ☐ Niagara (NIA)
☐ Poletti (POL) ☐ St. Lawrence (STL)
☐ White Plains Headquarters ☐ Other/Specify _____

The Contractor's personnel listed below no longer require access to NYPA facilities:

Contractor
Personnel Name: _____

Address: _____

Date of Birth: _____

NYPA Badge Number: _____ Returned on: _____

Reason for Revocation: _____

_____ Company Representative	_____ Signature	_____ Title
_____ Company Name	_____ Telephone	_____ Date

Note: Terminations/Removal from NYPA job location or removal of need for NERC CIP CCA access warrants an immediate notification (within 24 hours) to Corporate/Site Security and paperwork to follow up within 7 calendar days.



**ATTACHMENT III
NYPA ACCESS AUTHORIZATION - BACKGROUND SCREENING SECURITY PROGRAM
ESCORT**

NAME: _____

COMPANY: _____

DATE: _____
(Expires Daily)

ESCORT: _____

*Escorts are responsible to be physically present at all times. Failure to do so could result in loss of escort privileges and disciplinary action.

NEW YORK CORRECTION LAW ARTICLE 23-A

LICENSURE AND EMPLOYMENT OF PERSONS PREVIOUSLY CONVICTED ON ONE OR MORE CRIMINAL OFFENSES

§750. Definitions. For the purposes of this article, the following terms shall have the following meanings:

- (1) "Public agency" means the state or any local subdivision thereof, or any state or local department, agency, board or commission.
- (2) "Private employer" means any person, company, corporation, labor organization or association which employs ten or more persons.
- (3) "Direct relationship" means that the nature of criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license, opportunity, or job in question.
- (4) "License" means any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. Provided, however, that "license" shall not, for the purposes of this article, include any license or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.
- (5) "Employment" means any occupation, vocation or employment, or any form of vocational or educational training. Provided, however, that "employment" shall not, for the purposes of this article, include membership in any law enforcement agency.

§751. Applicability. The provisions of this article shall apply to any application by any person for a license or employment at any public or private employer, who has previously been convicted of one or more criminal offenses in this state or in any other jurisdiction, and to any license or employment held by any person whose conviction of one or more criminal offenses in this state or in any other jurisdiction preceded such employment or granting of a license, except where a mandatory forfeiture, disability or bar to employment is imposed by law, and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct. Nothing in this article shall be constructed to affect any right an employer may have with respect to an intentional misrepresentation in connection with an application for employment made by a prospective employee or previously made by a current employee.

§752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited. No application for any license or employment, and no employment or license held by an individual, to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless:

- (1) There is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or
-

- (2) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

§753. Factors to be considered concerning a previous criminal conviction; presumption. 1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

§754. Written statement upon denial of license or employment. At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

§755. Enforcement. 1. In relation to actions by public agencies, the provisions of this article shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules. 2. In relation to actions by private employers, the provisions of this article shall be enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive law, and, concurrently, by the New York City commission on human rights.

A Summary of Your Rights Under the Fair Credit Reporting Act



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Para informacion en espanol, visite www.ftc.gov/credit o escribe a la FTC Consumer Response Center, Room 130-A 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.ftc.gov/credit or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.**

- **You must be told if information in your file has been used against you.**
Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.**
You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
 - A person has taken adverse action against you because of information in your credit report;
 - You are the victim of identity theft and place a fraud alert in your file;
 - Your file contains inaccurate information as a result of fraud;
 - You are on public assistance;
 - You are unemployed but expect to apply for employment within 60 days.In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.
- **You have the right to ask for a credit score.**
Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.**
If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.**



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A Summary of Your Rights Under the Fair Credit Reporting Act



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Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

- **Consumer reporting agencies may not report outdated negative information.**
In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.**
A consumer reporting agency may provide information about you only to people with a valid need – usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.**
A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.ftc.gov/credit.
- **You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.**
Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-567-8688.
- **You may seek damages from violators.**
If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.**
For more information, visit www.ftc.gov/credit.



A Summary of Your Rights Under the Fair Credit Reporting Act



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States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. Federal enforcers are:

TYPE OF BUSINESS:	PLEASE CONTACT:
Consumer Reporting Agencies, creditors and others not listed below	Federal Trade Commission Consumer Response Center - FCRA Washington, D.C. 20580 1-877-382-4357
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, D.C. 20219 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, D.C. 20551 202-452-3693
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Complaints Washington, D.C. 20552 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-519-4600
State-chartered banks that are not members of the Federal reserve System	Federal Deposit Insurance Corporation Consumer Response Center 2345 Grand Avenue, Suite 100, Kansas City, MO 64108-2638 1-877-275-3342
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation Office of Financial Management Washington, D.C. 20590 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator - GIPSA Washington, D.C. 20250 202-720-7051

12/29/2004



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APPENDIX "E"

OMNIBUS PROCUREMENT ACT OF 1992 REQUIREMENTS

A. DECLARATION OF POLICY

It is the policy of New York State to encourage the use of New York state subcontractors and suppliers, and to promote the participation of minority and women-owned businesses where possible, in the procurement of goods and services.

1. A New York State Business Enterprise shall mean a business enterprise, including a sole proprietorship, partnership, or corporation which offers for sale or lease or other form of exchange, goods which are sought by the Authority and which are substantially manufactured, produced or assembled in New York State or services which are sought by the Authority and which are substantially performed within New York State.
2. A New York Resident means a natural person who maintains a fixed, permanent and principal home located within New York State and to which such person, whenever temporarily located, always intends to return.
3. A Foreign Business Enterprise means a business enterprise, including a sole proprietorship, partnership of corporation, which offers for sale, lease or other form of exchange, goods which are sought by the corporation and which are substantially produced outside New York State, or services, other than construction services sought by the corporation which are substantially performed outside New York State. For purposes of construction services, foreign business enterprise shall mean a business enterprise, including a sole proprietorship, partnership of corporation, which has its principal place of business outside New York State.

B. Information concerning the availability of New York State subcontractors and suppliers and the directory of Certified Minority and Women-Owned Business Enterprises is available from:

New York State Department of Economic Development
Division for Small Business
One commerce Plaza
Albany, New York 12245
Phone: (518) 474-7756
Fax: (518) 468-6416

C. For all contracts the Authority requires bidders to identify the location of the plant where equipment is substantially manufactured, produced or assembled or where services are substantially performed using the Geographic Origin Form, annexed hereto as Attachment 1.

D. A bidder located in a foreign country will cooperate with any effort to obtain offset credits from foreign countries as a result of the contract. The Authority may assign or otherwise transfer offset credits created by this contract to third parties located in New York State.

E. CONTRACTS EQUAL TO OR GREATER THAN ONE MILLION DOLLARS

1. For any contract let by the Authority in an amount equal to or greater than one million dollars, the bidder shall, as supplementary materials to its bid: Document its efforts that it has (a) solicited bids, in a timely and adequate manner, from New York State Business Enterprises including certified Minority and Women-Owned Business, or (b) contacted the New York State Department of Economic Development to obtain listings of New York State Business Enterprises, or (c) placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York State, or (d) participated in bidder outreach conferences. If the Bidder determines that New York State Business Enterprises are not available to participate on the contract as subcontractors or suppliers, the bidder shall provide a statement to the Authority indicating the method by which such determination was made. If the Bidder does not intend to use subcontractors on the contract, the Bidder shall provide a statement to the Authority verifying such intent.
2. As documentation of its efforts to encourage the participation of New York State Business Enterprises and Minority and Women Owned Businesses as suppliers and subcontractors pursuant to this section, the bidder shall submit the Documentation Checklist, annexed hereto as Attachment 2. The bidder's notification to New York State residents can be provided by telecopying a Fast Fax Job Order form to the Community Service Division of the New York State Department of Labor. A Fast Fax Job Order form is annexed hereto as Attachment 3. The bidder may attach a completed Fast Fax Job Order form as documentation of its efforts to provide notification pursuant to this section.
3. Following the award of any procurement contract equal to or greater than 1 million dollars, the contractor shall submit the Post-Award Compliance Report, annexed hereto as Attachment 4, documenting its notification efforts.
4. By submission of its bid, the bidder attests to compliance with the federal equal employment opportunity act of 1972 (P.L. 92-261), as amended.

**NEW YORK POWER AUTHORITY
GEOGRAPHIC ORIGIN FORM**

Bidder:

IMPORTANT NOTE TO BIDDERS

Pursuant to the Omnibus Procurement Act of 1992, the Authority is required to determine whether each award is designated as a NYSBE or FBE. Please complete this form to identify the location of the plant where each item in this bid package is substantially manufactured, produced or assembled or where services will be substantially performed. If necessary, please contact the manufacturer to insure the accuracy of this information.

RETURN THIS FORM WITH YOUR PROPOSAL.

- NOTE: (a) If all items are substantially manufactured in the same location, complete only item 1 indicating same.
(b) If all items are not substantially manufactured in the same location, complete a section for each item in this bid package.

PLEASE copy this form as needed for additional items.

EQUIPMENT

ITEM NO.	DESCRIPTION & MODEL NUMBER	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
1.		\$ _____	\$ _____	\$ _____
Manufacturer: _____ City: _____ State: _____				
Address of plant where item is substantially manufactured: _____				
2.		\$ _____	\$ _____	\$ _____
Manufacturer: _____ City: _____ State: _____				
Address of plant where item is substantially manufactured: _____				
3.		\$ _____	\$ _____	\$ _____
Manufacturer: _____ City: _____ State: _____				
Address of plant where item is substantially manufactured: _____				
4.		\$ _____	\$ _____	\$ _____
Manufacturer: _____ City: _____ State: _____				
Address of plant where item is substantially manufactured: _____				
5.		\$ _____	\$ _____	\$ _____
Manufacturer: _____ City: _____ State: _____				
Address of plant where item is substantially manufactured: _____				

SERVICES

Please indicate the location where services will be substantially performed:

NEW YORK POWER AUTHORITY
DOCUMENTATION CHECKLIST
(FOR PROCUREMENT CONTRACTS EQUAL TO OR GREATER THAN \$1 MILLION)

BIDDER: _____ INQUIRY NUMBER: _____

Pursuant to the Omnibus Procurement Act of 1992 and Section 2879 of the Public Authorities Law, the bidder is required to document its efforts to encourage participation of New York State Business Enterprises and Certified Minority and Women Business Enterprises as supplier and subcontractors.

A. The Bidder shall document its efforts to show that it has:

1. Solicited bids in a timely and adequate manner from New York State Business Enterprises including Certified Minority and Women Owned Businesses; or
2. Contacted the New York State Department of Economic Development to obtain listings of New York State Business Enterprises and Certified Minority and Women Owned Businesses for opportunities as subcontractors and suppliers in this procurement contract; or
3. Notified New York State Residents of opportunities as subcontractors and suppliers in this procurement contract by one or more of the following methods:
 - a. Placing advertisements in newspapers, journals or other trade publications distributed in New York State.
 - b. Contacting the New York State Community Service Division via the attached Fast Fax Job Order form (annexed hereto as Attachment 3).
 - c. Participating in Bidder Outreach Conferences.

B. Where there are no New York State Business Enterprises available to participate as subcontractors or suppliers, the successful bidder will provide the Authority with a statement indicating the method by which such determination was made.

C. Where the successful bidder does not intend to use any subcontractors or suppliers in this procurement contract, a statement shall be provided to the Authority indicating such.

The undersigned assures related documentation is on file and available upon request to the Authority or New York State.

BY: _____
SIGNATURE

BY: _____
NAME/TITLE PRINTED



New York State Department of Labor

Job Order

Employer: Please complete one Job Order for each job title and fax/mail to us. It is only necessary to notify one office of your opening. By using this form to post your openings you will reach all Department of Labor offices.

Company _____	Unemployment Insurance Employer Registration No. _____
Address _____	City _____ State _____ Zip _____
Telephone # () _____ Ext. _____	Fax # () _____
What goods or services does your Company produce? _____	
Person to contact for interview _____	Title _____
E-mail address _____	Worksite, if different from company address _____
Travel Directions (Include public transportation, if available): _____	

Does your Company have a Federal Contract requiring job openings to be listed with the Department of Labor (FCIL)? Yes _____ No _____

Does your Company wish to receive more information on tax incentives for hiring from targeted groups? Yes _____ No _____

Title Of Job Opening _____ Number Of Job Openings _____

Referral Instructions: Fax/Send Resume _____ Send Direct _____ Call Before Sending _____

Number of Persons You Wish to Interview _____ Number of Resumes You Wish to Review _____

Job Requirements

Years of Education Needed _____ Specialized Education? (Type of Degree) _____

Years of Experience Required _____ Will you accept a trainee? Yes _____ No _____

Will you accept related experience? Yes _____ No _____ If Yes, specify: _____

Job is: Full Time _____ Part-Time _____ Regular _____ Temporary _____ (From _____ to _____)

Work Hours: From: _____ To: _____ Total hours per week _____ Overtime: Yes _____ No _____ Circle Work Days: S M T W T F

Salary Range: From \$ _____ To \$ _____ Per _____ Pay Period: _____ Weekly _____ Bi-Weekly _____

Salary Negotiable? Yes _____ No _____ Monthly _____ Bi-Monthly _____

Other Hiring Requirements/Benefits

Driver's License	Yes _____	No _____	Class _____	Health Insurance	Yes _____	No _____
Own Tools	Yes _____	No _____		Life Insurance	Yes _____	No _____
*Physical Exam	Yes _____	No _____		Dental Insurance	Yes _____	No _____
Drug Screening	Yes _____	No _____		Paid Vacation	Yes _____	No _____
Employment/Security Test	Yes _____	No _____	Name _____	Paid Sick Leave	Yes _____	No _____
Other Tests	Yes _____	No _____		Retirement Plan	Yes _____	No _____
Must Join Union	Yes _____	No _____		Other _____		
Bondable	Yes _____	No _____				

Job Description

Please describe your job opening. List your special knowledge, skills, aptitudes, abilities required; equipment used or operated; special physical demands or working conditions. If available, provide a detailed job description. Include the worksite location, if different from the company address. Attach additional sheets if necessary.

Job Description: _____

*Required only after job offer and if relevant to job opening.

All hiring requirements must be bonafide occupational qualifications

NEW YORK STATE DEPARTMENT OF LABOR
Division of Employment Services

The information you provide on the other side of this form will help us to understand your hiring needs, and to locate and select suitable candidates. Please review the information below, and use it as a guide when completing the Job Order form. Then mail or fax the form to the office nearest you, or use the form as a guide if you prefer to telephone us with your job order.

Unemployment Insurance Employer Registration Number: Please provide this number when faxing or calling in a job order. This verifies that you are authorized to operate within New York State. If you are a new employer and have just applied for this number, please advise us; we will use your Federal Tax I.D. number on an interim basis.

Referral Instructions: On job listings made available for job seekers' review, the Department of Labor withholds the employer's name, address, and contact information. This allows our staff to screen individuals' qualifications before referring them to you, and to send only the number of candidates or resumes you have requested.

Referral Results: It is critical for us to get feedback concerning the quantity and quality of the referrals that we make to your company. This will help us in our constant goal of improving our service to you and to the business community. For this reason, if we do not hear from you about referral results, Department of Labor staff may contact you for this information.

National Exposure: America's Job Exchange (AJE) is a nationwide network of job banks from other states that includes an Internet site. Your job openings will reach a nationwide audience of job seekers.
(www.americasjobexchange.com)

Veterans Preference: The Department of Labor makes every effort to find the most suitable candidates for your job opening(s). Our job seeker file contains military veterans skilled in many occupations and job duties. Department of Labor policy is to refer qualified veterans to job openings before qualified non-veterans.

Benefits: To attract the best applicants, it is important for you to let potential employees know the benefits that you offer with your job. To some individuals, the benefits you provide may be more important than salary.

Technology

The New York State Department of Labor helps employers fill thousands of job openings with qualified workers each year. Like any other service agency, we are always looking for ways to make our operation more efficient and responsive to the people we serve. As part of this continuing effort, we have introduced some enhancements for matching candidates to job openings, using computer technology:

- **Computer Matching** - A computerized pre-screening and notification system that alerts potential candidates of your job opening, matching your job requirements with an applicant's special skills and abilities.
- **Internet** - Job openings listed with the Department of Labor can be viewed on our Internet Home Page. This web site includes a direct link to America's Job Exchange, as well as a variety of resource information for both employers and job seekers. Visit our web site at <http://www.labor.state.ny.us> to access economic and demographic data, including wages, occupational projections and other labor Market information relevant for business customers.

NEW YORK POWER AUTHORITY
POST-AWARD COMPLIANCE REPORT
(FOR PROCUREMENT CONTRACTS EQUAL TO OR GREATER THAN \$1 MILLION)

To be completed by contractor upon notification of award.

Pursuant to the Omnibus Procurement Act of 1992, the Authority requires the contractor to complete this form.

NAME OF CONTRACTOR: _____ CONTRACT NUMBER: _____

1. The contractor has made all reasonable efforts to encourage the participation of NYS Business Enterprises as suppliers and subcontractors in this procurement contract.

YES ____ NO

If no, please explain:

2. The contractor has contacted the NYS Department of Economic Development to obtain listings of NYS subcontractors and suppliers for products and services currently purchased from out-of-state/foreign firms.

YES ____ NO

If no, please explain:

3. The contractor has utilized other source(s) to identify NYS subcontractors and suppliers.

YES ____ NO

If yes, please identify source(s):

If no, please explain:

4. The contractor has complied with the federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended.

YES ____ NO

5. The contractor has provided NYS residents notice of new employment opportunities resulting from this procurement contract by listing any such positions with the Job Service Division of the NYS Department of Labor via Fast Fax form or other method consistent with collective bargaining agreements or contracts.

YES ____ NO

Attach documentation of notification; if none, please explain:

By signing this Post-Award Compliance Report the contractor assures the above information is true and supporting documentation is available (upon request by New York State or the Authority).

BY: _____
SIGNATURE

BY: _____
NAME/TITLE PRINTED

APPENDIX G

EQUAL EMPLOYMENT OPPORTUNITIES REQUIREMENTS

During the performance of this contract, the Contractor agrees as follows:

I. EQUAL EMPLOYMENT OPPORTUNITIES (EEO) REQUIREMENTS [Applicable to all Contracts valued at \$25,000 or less]

- A. The Contractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, marital status or disability (as defined in Section 312 of the Executive Law) and will take affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination on the basis of age, race, creed, color, sex, national origin, marital status or disability. Such action shall be taken with reference, but not limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- B. The Contractor will send to each employment agency, labor union or authorized representative of workers with which it is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Division of Human Rights, advising such labor union or representative of the Contractor's agreement under clauses (a) through (g) (hereinafter called "nondiscrimination clauses"). At the request of the Authority, the Contractor shall request such employment agency, labor union or representative to furnish it with a written statement that such employment agency, labor union or authorized representative will not discriminate on the basis of age, race, creed, color, sex national origin, marital status or disability and that such employment agency, labor union or authorized representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these nondiscrimination clauses or that is consistent and agrees that recruitment, employment and the terms and conditions of employment under this Contract shall be in clauses. If such employment agency, labor union or authorized representative fails or refuses to comply with such request that it furnish such a statement, the Contractor shall promptly notify the Authority of such failure or refusal.
- C. The Contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Division of Human Rights setting forth the substance of the provisions of clauses A. and B. and such provisions of the State's laws against discrimination as the State Division of Human Rights shall determine.
- D. The Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor that, in performance of the Authority's contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of age, race, creed, color, sex, national origin, marital status or disability.
- E. The Contractor will comply with the provisions of Sections 291-299 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights under these nondiscrimination clauses and such sections of the Executive Law, and will permit access to his books, records and accounts by the Authority, the State Division of Human Rights, the Attorney General and the Commissioner of Labor for purposes of investigation to ascertain compliance with these nondiscrimination clauses and such section of the Executive Law and Civil Rights Law.

II. EQUAL EMPLOYMENT OPPORTUNITIES (EEO) REQUIREMENTS [Applicable to all Contracts valued over \$25,000]

- A. In accordance with the Authority's Minority and Women Owned Business Enterprise Policy and with Article 15-A of the Executive Law and the regulations promulgated thereto, the Authority has established the following Equal Employment Opportunity Requirements. The EEO requirements are applicable to all Authority Contracts issued in excess of \$25,000 and/or where a Contractor has a work force of 10 employees or more working on an Authority Contract.
- B. The Contractor shall designate and make known to the Authority an EEO officer who will have the responsibility for and the authority to effectively administer their EEO program.
- C. **IF A CONTRACTOR DOES NOT SUBMIT, WITH ITS BID PROPOSAL, AN EEO POLICY STATEMENT AND STAFFING PLAN OR TOTAL WORK FORCE INFORMATION, THE BID WILL BE REJECTED UNLESS REASONABLE JUSTIFICATION FOR SUCH FAILURE IS PROVIDED IN WRITING OR A COMMITMENT IS MADE TO PROVIDE SUCH DOCUMENTS BY A DATE SPECIFIED BY THE AUTHORITY.**

EEO POLICY

It is the policy of the Authority to afford Equal Employment Opportunities regardless of race, creed, color, national origin, sex, age, disability or marital status. The EEO requirements also provide methods for Contractors to identify, recruit, and employ minority group members and women on State contracts. The parties agree as a condition of an Authority Contract to be bound by the provisions of Section 312 of Article 15-A of the Executive Law, as well as to any other applicable provisions under the law and this Contract.

1. DEFINITIONS

- A) **Business Enterprise.** Any entity, including a sole proprietorship, partnership or corporation which is authorized to and engages in lawful business transactions in accordance with New York State Law.
- B) **Contractor.** The person, partnership or corporation to whom the Authority's Procurement/Service Contract for Goods/Materials or Services is awarded.
- C) **Equal Employment Opportunities (EEO).** A Contractor and subcontractor's concurrence and active efforts to afford employment opportunities for minority group members and women without discrimination because of race, creed, color and national origin, sex, age, disability or marital status, and to employ and utilize minority group members and women in their work forces on Authority Contracts.
- D) **Labor Force Availability Data.** Data pertaining to the relevant availability and expected levels of participation of minority group members and women on Authority Contracts. The data are developed by the New York State (NYS) Department of Economic Development, Division of Minority and Women's Business Development (DMWBD) and are based upon the most recent census data provided by the NYS Department of Labor, Bureau of Labor Market Information, aggregated into nine (9) Federal Occupational Categories. The nine Occupational Categories include: Official and Admin., Professionals, Office and Clerical, Skilled Craft, Operatives, Laborers, Technicians, Service Workers, and Sales Workers.
- E) **Minority Group Member.** A United States Citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
 - 1) Black persons having origins in any of the Black African racial group;
 - 2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;

- 3) Native American or Alaskan native persons having origins in any of the original peoples of North America;
 - 4) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.
- F) Staffing Plan (Form G-1). Describes the anticipated work force on an Authority Contract broken down by ethnic background, gender and specified occupational categories and required for all non-construction Contracts subject to EEO requirements, **prior to award**. The form of the staffing plan shall be provided by the Authority.
- G) Work Force Employment Utilization Reports (Form G-2, G-3 & G-4). **Required within ten (10) days of all contract awards**. It requires a breakdown of total hours worked by Federal Occupational Category, by number of employees, by gender and by ethnic categories for Non-Construction Contracts. Work Force Employment Utilization Reports shall be provided by the Authority.
- 1) Project Specific Work Force Reports. Required where the work force on an Authority Contract **can** be separated out from a Contractor's total work force. (Required quarterly)
 - 2) Total Work Force Reports. Required where work force on an Authority Contract **cannot** be separated out from a Contractor's total work force. (Required semi-annually)
- H) Monthly Work Force Employment Utilization Report - Construction (Form G-5). **Required within ten (10) days of all contract awards**. It requires a breakdown of total hours worked by Job Category, by number of employees by Federal occupational categories, by gender and by ethnic categories for Construction Contracts. The Monthly Work Force Employment Utilization Report - Construction shall be provided by the Authority.
- Referencing subparagraphs G1), G2), and H) above, if there has been no change in the work force quarterly, semi-annually or monthly, respectively, a written notice of such must be provided to the Authority.
- I) Goal. The term referring to the aim of ensuring that minority group members and women and certified businesses be given the opportunities for meaningful participation in employment on and in the performance of and Authority contract.

III. SUMMARY OF EQUAL EMPLOYMENT OPPORTUNITY REGULATIONS

- A. The new Equal Employment Opportunity (EEO) regulations provide methods for Contractors to identify, recruit and employ minority group members and women on State contracts. The regulations enable the State, with regard to minority group members and women, to measure utilization and to assist Contractors in expanding employment opportunities.
- B. The regulations are in accordance with Section 312 of Executive Law, Article 15-A, and are consistent with the State's policy of affording equal employment opportunities regardless of race, creed, color, national origin, sex, age, disability or marital status. The regulations apply to all State contracts, as defined by Article 15-A.
- C. RESPONSIBILITIES OF CONSTRUCTION CONTRACTORS ARE TO:
1. undertake or continue existing programs of affirmative action;
 2. submit to the Authority, prior to the award of the Contract, an EEO Policy Statement;
 3. ensure that all subcontractors comply with the EEO requirements;
 4. submit to the Authority, within ten (10) days of Contract award, a Work Force Employment Utilization Report including the same information now mandated by the federal government, such as employees' hours worked on activities related to the Contract broken down by specified ethnic background, gender and the construction related job titles; and
 5. provide the Authority with a Work Force Employment Utilization Report on a monthly basis throughout the life of the Contract.
 6. within five (5) business days of contract award, obtain from the Authority a copy of the New York State Labor Force Availability data document for its use in complying with EEO requirements.
- D. RESPONSIBILITIES OF COMMODITIES, SERVICES/CONSULTING, AND PROFESSIONAL CONSTRUCTION CONSULTANT CONTRACTORS ARE TO:
1. undertake or continue existing programs of affirmative action;
 2. submit to the Authority an EEO policy statement after a bid opening, but before the Contract is awarded;
 3. ensure that all subcontractors comply with the EEO requirements;
 - 4(a). submit to the Authority, pre-award, a staffing plan that describes the anticipated work force on the contract broken down by ethnic background, gender and specific occupational categories;
 - 4(b). or alternatively submit, pre-award, where the work force on the Contract can not be separated out from the contractor's total work force, information on the total work force broken down by ethnic background, gender and specified occupational categories;
 - 5(a). submit to the Authority, within ten (10) days of Contract award, a Work Force Employment Utilization Report including the total number of actual employees working on the Contract broken down by ethnic background, gender and specified occupational categories;
 - 5(b). or alternatively submit, within ten (10) days of Contract award, where the work force on the Contract cannot be separated out from the Contractor's total work force, semi-annual information on the total work force; and
 6. provide to the Authority, when the work force utilization information changes, revised work force utilization reports on a quarterly basis throughout the life of the Contract.
- E. RESPONSIBILITIES OF STATE AGENCIES ARE TO:
1. revise their annual goal plans to include steps that will be taken to implement and ensure compliance with the EEO requirements and any proposed modifications to the implementation of these requirements;
 2. supply to the successful Contractor a copy of New York State's Economic Development Labor Force Availability Data. The data is provided as a tool to aid in determining the expected level of participation consistent with the labor force availability and geographic locations of minority and women in the county where the work is being performed.
 3. provide quarterly reports to the DMWBD on Contractors' work force information broken down by ethnic background, gender and specified occupational categories;
 4. monitor Contractors' compliance with the EEO regulations and provide the DMWBD with written compliance findings annually;
 5. resolve noncompliance matters with Contractors. Those matters that cannot be resolved must be submitted to the Executive Director of the DMWBD; and
 6. conduct, on selected Contracts, in-depth analysis, evaluating whether, with regard to minority group members and women, the Contractor:
 - a) maintains a list of recruitment sources (available from DMWBD);
 - b) provides written notification to recruitment sources of job openings;
 - c) disseminates its EEO policy by including it in advertising; and
 - d) supports recruiting, hiring, apprentice training and internal EEO policies and procedures.



CONTRACTOR STAFFING PLAN

Form G-1

Project/RFP Title _____

Location of Contract:

County

ZIP

Contractor/Firm Name _____

Address

City

State

ZIP

Check applicable categories:

(1) Staff Estimates include:

☐ Contract/Project Staff

☐ Total Work Force

☐ Subcontractors

(2) Type of Contract:

☐ Construction Consultants

☐ Commodities

☐ Services/Consultants

Total Anticipated Work Force											Total Percent Minority Employees	Total Percent Female Employees
Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/ Alaskan Native			
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Officials/Admin.												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Craft Workers												
Operatives												
Laborers												
Service Workers												
TOTALS												

Company Official's Name _____ Title _____

Company Official's Signature _____ Date _____

Telephone Number (____) _____



CONTRACTOR WORK FORCE EMPLOYMENT UTILIZATION REPORT
PROFESSIONAL CONSTRUCTION CONSULTANT FIRMS

Form G-2

Agency New York Power Authority /Code 99905

Reporting Period
Check one: ☐ Quarterly Report ☐ Semi-Annual Report

Contractor Firm Name _____

Address _____

City _____

State _____

Zip _____

Type of Report: ☐ Contract Specific

☐ Work Force

☐ Total Work Force

☐ Check if NOT-FOR-PROFIT

Federal ID/Payee Id No. _____

Check One: ☐ Prime Contractor ☐ Subcontractor

Contract Amount: \$ _____

Contract No. _____ Location of Work _____

County _____

ZIP _____

Product/Service Provided: _____

Contract Start Date: _____

Percent of Job Completed _____

Number of Employees

Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/ Alaskan Native		Total Percent Minority Employees	Total Percent Female Employees
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Officials/Admin.												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Craft Workers												
Operatives												
Laborers												
Service Workers												
TOTALS												

Company Official's Name _____ Title _____

Company Official's Signature _____ Date _____

Telephone Number (____) _____

**WORK FORCE EMPLOYMENT UTILIZATION REPORT
PROFESSIONAL CONSTRUCTION CONSULTANT FIRMS
INSTRUCTIONS FOR COMPLETION**

PURPOSE: The *Work Force Employment Utilization Report for Professional Construction Consultant Firms* is prepared by all contractors, and subcontractors if any, providing professional construction (e.g. architectural, engineering) services to document their actual employment of minority group members and women during the period covered by the report. The report has a format similar to forms used by the Federal government for reporting equal employment opportunity data. When the *contract specific work force* can be identified, the report covers all employees (including apprentices or trainees) working on the project. If the contract specific work force *cannot* be separated out, the contractor's *total work force* is reported. The completed reports are used by the contracting state agency to monitor the contractor's and subcontractor's compliance with the contract's equal employment opportunity requirements.

GENERAL INFORMATION:

1. **Name of contracting state agency** and state agency code (five digit code).
2. **Reporting period** covered by report (mm/dd/yy to mm/dd/yy); **check** to indicate *Quarterly or Semi-Annual* Report.
3. **Contractor firm name** (prime contractor on summary report submitted to agency) and **address** (including city name, state and zip code); **check** if the contractor is a NOT-FOR-PROFIT.
4. **Type of Report:** **check** to indicate whether report covers (i) the *Contract Specific Work Force* or (ii) the *Company's Total Work Force* (in the event the contract specific work force cannot be separated out).
5. Contractor **Federal Employer Identification number** or payee identification number (prime contractor i.d. on summary report); **check** to indicate prime or subcontractor report.
6. **Contract Amount** is dollar amount based on terms of the contract.
7. **Contract number** is the agency assigned number given to the contract.
8. **Location of work** including county and zip code where work is performed.
9. Indicate **Product or Service provided** by contractor (brief description).
10. **Contract start date** is month/day/year work on contract actually began.
11. Contractor's **estimate of the percentage of work completed** at the end of this reporting period.

FEDERAL OCCUPATIONAL CATEGORIES: The contractor's work force is broken down and reported by the nine *Federal Occupational Categories (FOC's)* consistent with the Federal government's EEO-1 categories for the private sector labor force. These are: *Officials and Manager, Professionals, Technicians, Sales, Office & Clerical (Administrative Support), Craft Workers, Operative, Laborers and Service Workers*. The categories are general in nature, and include all related occupational job titles. The contracting agency can provide assistance in categorizing specific jobs.

TOTAL NUMBER OF EMPLOYEES: Record the *total number of all persons employed* in each FOC during the reporting period, regardless of ethnicity (either working on the specific contract OR in the contractor's total work force, based on the type of report indicated above). Report the total number of male (M) employees in column (1) and the total number of female (F) employees in column (2) for each FOC. In columns (3) through (10) report the numbers of male and female *minority group members* employed, based on the following defined groups:

- ☐ **Black (not of Hispanic origin):** all persons having origins in any of the Black African racial groups;
- ☐ **Hispanic:** all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or either Indian or Hispanic origin, regardless of race;
- ☐ **Asian or Pacific Islander:** all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or Pacific Islands;
- ☐ **Native American or Alaskan Native:** all persons having origins in any of the original peoples of North America.

TOTAL % MINORITY = sum of all minority group members (male and female) employed in the FOC divided by the total number of all employees in that FOC (column 1 + column 2).

TOTAL % FEMALE = total number of female employees in the FOC (column 2) divided by the total number of all employees in that FOC (column 1 + column 2).

TOTALS: column totals should be calculated (sum each column) for all FOC's combined. Total minority and female percentages should be calculated as shown above, based on the column totals.

SUBMISSION: The Work Force Employment Utilization Report is to be completed by both prime and subcontractors and **signed and dated** by an *authorized representative* before submission. This **Company Official's name, official title and telephone number** should be printed or typed where indicated on the bottom of the form.

The *prime contractor* shall complete a report for its own work force, **collect** reports completed by each subcontractor, and **prepare a summary report for the entire combined contract work force**. The reports shall include the total number of employees in each occupational category for all payrolls completed in the monthly reporting period. The prime contractor shall submit the summary report to the contracting agency as required by *Part 542 of Title 9 Subtitle N of the NYCRR pursuant to Article 15-A of the Executive Law*.



CONTRACTOR WORK FORCE EMPLOYMENT UTILIZATION REPORT
COMMODITIES FIRMS

Form G-3

Agency New York Power Authority /Code 99905

Reporting Period
Check one:

☐ Quarterly Report

☐ Semi-Annual Report

Contractor Firm Name _____

Address _____

City _____

State _____

Zip _____

Type of Report: ☐ Contract Specific

☐ Work Force

☐ Total Work Force

☐ Check if NOT-FOR-PROFIT

Federal ID/Payee Id No. _____

Check One: ☐ Prime Contractor ☐ Subcontractor

Contract Amount: \$ _____

Contract No. _____ Location of Work _____

County _____

ZIP _____

Product/Service Provided: _____

Contract Start Date: _____

Percent of Job Completed _____

Number of Employees										Total Percent Minority Employees	Total Percent Female Employees	
Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/ Alaskan Native			
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Officials/Admin.												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Craft Workers												
Operatives												
Laborers												
Service Workers												
TOTALS												

Company Official's Name _____ Title _____

Company Official's Signature _____ Date _____

Telephone Number (____) _____

WORK FORCE EMPLOYMENT UTILIZATION REPORT
COMMODITIES FIRMS
INSTRUCTIONS FOR COMPLETION

PURPOSE: The *Work Force Employment Utilization Report for Commodities Firms* is prepared by all contractors, and subcontractors if any, providing goods, products or merchandise to a state agency to document their actual employment of minority group members and women during the period covered by the report. The report has a format similar to forms used by the Federal government for reporting equal employment opportunity data. When the *contract specific work force* can be identified, the report covers all employees (including apprentices or trainees) working on the project. If the contract specific work force *cannot* be separated out, the contractor's *total work force* is reported. The completed reports are used by the contracting state agency to monitor the contractor's and subcontractor's compliance with the contract's equal employment opportunity requirements.

GENERAL INFORMATION:

1. **Name of contracting state agency** and state agency code (five digit code).
2. **Reporting period** covered by report (mm/dd/yy to mm/dd/yy); **check** to indicate *Quarterly or Semi-Annual* Report.
3. **Contractor firm name** (prime contractor on summary report submitted to agency) and **address** (including city name, state and zip code); **check** if the contractor is a NOT-FOR-PROFIT.
4. **Type of Report:** **check** to indicate whether report covers (i) the *Contract Specific Work Force* or (ii) the *Company's Total Work Force* (in the event the contract specific work force cannot be separated out).
5. Contractor **Federal Employer Identification number** or payee identification number (prime contractor i.d. on summary report); **check** to indicate prime or subcontractor report.
6. **Contract Amount** is dollar amount based on terms of the contract.
7. **Contract number** is the agency assigned number given to the contract.
8. **Location of work** including county and zip code where work is performed.
9. Indicate **Product or Service provided** by contractor (brief description).
10. **Contract start date** is month/day/year work on contract actually began.
11. Contractor's **estimate of the percentage of work completed** at the end of this reporting period.

FEDERAL OCCUPATIONAL CATEGORIES: The contractor's work force is broken down and reported by the nine **Federal Occupational Categories (FOC's)** consistent with the Federal government's EEO-1 categories for the private sector labor force. These are: *Officials and Manager, Professionals, Technicians, Sales, Office & Clerical (Administrative Support), Craft Workers, Operative, Laborers and Service Workers*. The categories are general in nature, and include all related occupational job titles. The contracting agency can provide assistance in categorizing specific jobs.

TOTAL NUMBER OF EMPLOYEES: Record the *total number of all persons employed* in each FOC during the reporting period, regardless of ethnicity (either working on the specific contract OR in the contractor's total work force, based on the type of report indicated above). Report the total number of male (M) employees in column (1) and the total number of female (F) employees in column (2) for each FOC. In columns (3) through (10) report the numbers of male and female *minority group members* employed, based on the following defined groups:

- ☐ **Black (not of Hispanic origin):** all persons having origins in any of the Black African racial groups;
- ☐ **Hispanic:** all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or either Indian or Hispanic origin, regardless of race;
- ☐ **Asian or Pacific Islander:** all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or Pacific Islands;
- ☐ **Native American or Alaskan Native:** all persons having origins in any of the original peoples of North America.

TOTAL % MINORITY = sum of all minority group members (male and female) employed in the FOC divided by the total number of all employees in that FOC (column 1 + column 2).

TOTAL % FEMALE = total number of female employees in the FOC (column 2) divided by the total number of all employees in that FOC (column 1 + column 2).

TOTALS: column totals should be calculated (sum each column) for all FOC's combined. Total minority and female percentages should be calculated as shown above, based on the column totals.

SUBMISSION: The Work Force Employment Utilization Report is to be completed by both prime and subcontractors and **signed and dated** by an *authorized representative* before submission. This **Company Official's name, official title and telephone number** should be printed or typed where indicated on the bottom of the form.

The **prime contractor** shall complete a report for its own work force, **collect** reports completed by each subcontractor, and **prepare a summary report for the entire combined contract work force**. The reports shall include the total number of employees in each occupational category for all payrolls completed in the monthly reporting period. The prime contractor shall submit the summary report to the contracting agency as required by *Part 542 of Title 9 Subtitle N of the NYCRR pursuant to Article 15-A of the Executive Law*.



CONTRACTOR WORK FORCE EMPLOYMENT UTILIZATION REPORT
SERVICE and/or CONSULTANT FIRMS

Form G-4

Agency New York Power Authority /Code 99905

Reporting Period
Check one: ☐ Quarterly Report ☐ Semi-Annual Report

Contractor Firm Name _____

Address _____

City _____

State _____

Zip _____

Type of Report: ☐ Contract Specific

☐ Work Force

☐ Total Work Force

☐ Check if NOT-FOR-PROFIT

Federal ID/Payee Id No. Check One: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor Contract Amount: \$			Contract No. _____ Location of Work _____ Product/Service Provided: _____ Contract Start Date: _____ Percent of Job Completed _____									
Number of Employees											Total Percent Minority Employees	Total Percent Female Employees
Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/ Alaskan Native			
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Officials/Admin.												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Craft Workers												
Operatives												
Laborers												
Service Workers												
TOTALS												
Company Official's Name _____ Title _____												
Company Official's Signature _____ Date _____												
Telephone Number (____) _____												

WORK FORCE EMPLOYMENT UTILIZATION REPORT
SERVICE and/or CONSULTANT FIRMS
INSTRUCTIONS FOR COMPLETION

PURPOSE: The *Work Force Employment Utilization Report for Service and/or Consultant Firms* is prepared by all contractors, and subcontractors if any, providing services (skilled or non-skilled) or professional consulting services to a state agency to document their actual employment of minority group members and women during the period covered by the report. The report has a format similar to forms used by the Federal government for reporting equal employment opportunity data. When the *contract specific work force* can be identified, the report covers all employees (including apprentices or trainees) working on the project. If the contract specific work force *cannot* be separated out, the contractor's *total work force* is reported. The completed reports are used by the contracting state agency to monitor the contractor's and subcontractor's compliance with the contract's equal employment opportunity requirements.

GENERAL INFORMATION:

1. **Name of contracting state agency** and state agency code (five digit code).
2. **Reporting period** covered by report (mm/dd/yy to mm/dd/yy); **check** to indicate *Quarterly or Semi-Annual* Report.
3. **Contractor firm name** (prime contractor on summary report submitted to agency) and **address** (including city name, state and zip code); **check** if the contractor is a NOT-FOR-PROFIT.
4. **Type of Report:** **check** to indicate whether report covers (i) the *Contract Specific Work Force* or (ii) the *Company's Total Work Force* (in the event the contract specific work force cannot be separated out).
5. Contractor **Federal Employer Identification number** or payee identification number (prime contractor i.d. on summary report); **check** to indicate prime or subcontractor report.
6. **Contract Amount** is dollar amount based on terms of the contract.
7. **Contract number** is the agency assigned number given to the contract.
8. **Location of work** including county and zip code where work is performed.
9. Indicate **Product or Service provided** by contractor (brief description).
10. **Contract start date** is month/day/year work on contract actually began.
11. Contractor's **estimate of the percentage of work completed** at the end of this reporting period.

FEDERAL OCCUPATIONAL CATEGORIES: The contractor's work force is broken down and reported by the nine **Federal Occupational Categories (FOC's)** consistent with the Federal government's EEO-1 categories for the private sector labor force. These are: *Officials and Manager, Professionals, Technicians, Sales, Office & Clerical (Administrative Support), Craft Workers, Operative, Laborers and Service Workers*. The categories are general in nature, and include all related occupational job titles. The contracting agency can provide assistance in categorizing specific jobs.

TOTAL NUMBER OF EMPLOYEES: Record the *total number of all persons employed* in each FOC during the reporting period, regardless of ethnicity (either working on the specific contract OR in the contractor's total work force, based on the type of report indicated above). Report the total number of male (M) employees in column (1) and the total number of female (F) employees in column (2) for each FOC. In columns (3) through (10) report the numbers of male and female *minority group members* employed, based on the following defined groups:

- ☐ **Black (not of Hispanic origin):** all persons having origins in any of the Black African racial groups;
- ☐ **Hispanic:** all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or either Indian or Hispanic origin, regardless of race;
- ☐ **Asian or Pacific Islander:** all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or Pacific Islands;
- ☐ **Native American or Alaskan Native:** all persons having origins in any of the original peoples of North America.

TOTAL % MINORITY = sum of all minority group members (male and female) employed in the FOC divided by the total number of all employees in that FOC (column 1 + column 2).

TOTAL % FEMALE = total number of female employees in the FOC (column 2) divided by the total number of all employees in that FOC (column 1 + column 2).

TOTALS: column totals should be calculated (sum each column) for all FOC's combined. Total minority and female percentages should be calculated as shown above, based on the column totals.

SUBMISSION: The Work Force Employment Utilization Report is to be completed by both prime and subcontractors and **signed and dated** by an *authorized representative* before submission. This **Company Official's name, official title and telephone number** should be printed or typed where indicated on the bottom of the form.

The **prime contractor** shall complete a report for its own work force, **collect** reports completed by each subcontractor, and **prepare a summary report for the entire combined contract work force**. The reports shall include the total number of employees in each occupational category for all payrolls completed in the monthly reporting period. The prime contractor shall submit the summary report to the contracting agency as required by *Part 542 of Title 9 Subtitle N of the NYCRR pursuant to Article 15-A of the Executive Law*.

CONTRACTOR MONTHLY WORK FORCE EMPLOYMENT UTILIZATION REPORT - CONSTRUCTION

Form G-5

Agency New York Power Authority /Code 99905 Reporting Period

Contractor Firm Name _____ Address _____ City _____ State _____ ZIP _____

Federal Id/Payee Id No. _____ Check One: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor Contract Amount \$ _____				Contract No. _____ Location of Work _____ County _____ ZIP _____ Contract Start Date: _____ Percent of Job Completed: _____														
F=Foreman/Supv. J=Journeyworker A=Apprentice/Trainee	Job or Trade Category	**	Total Hours Worked During Reporting Period										Minority %	Female %	Total Number of Employees		Total Number of Minority Employees	
			Total Hours Worked All Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/Alaskan Native				M	F	M	F
			M	F	M	F	M	F	M	F	M	F			M	F	M	F
	Field Office Staff:																	
	Professionals																	
	Office/Clerical																	
	Laborers	F																
		J																
		A																
	Equipment Operators	F																
		J																
		A																
	Surveyors	F																
		J																
		A																
	Truck Drivers	F																
		J																
		A																
	Iron Workers	F																
		J																
		A																
	Carpenters	F																
		J																
		A																
	Cement Masons	F																
		J																
		A																
	Painters	F																
		J																
		A																
	Electricians	F																
		J																
		A																
	Plumbers	F																
		J																
		A																
	Other:	F																
		J																
		A																
GRAND TOTALS																		
Company Official's Name _____ Title _____																		
Company Official's Signature _____ Date _____																		
Telephone Number (____) _____																		

MONTHLY WORK FORCE EMPLOYMENT UTILIZATION REPORT - CONSTRUCTION
INSTRUCTIONS FOR COMPLETION

PURPOSE: The *Monthly Work Force Employment Utilization Report* is prepared by all construction contractors, and subcontractors to document their actual employment of minority group members and women during the period covered by the report. The report has a format similar to forms used by the Federal government (e.g. U.S. Department of Labor) for reporting equal employment opportunity data. The report covers all hourly workers, including foremen, supervisors or crew chiefs, journey workers and apprentices or trainees working on the project. Professional and office clerical field office staff working on the contract shall also be reported. The completed reports are used by the contracting state agency to monitor the contractor's and subcontractor's compliance with the contract's equal employment opportunity requirements.

GENERAL INFORMATION:

1. **Name of contracting state agency** and state agency code (five digit code).
2. **Reporting period** covered by report (month/year).
3. **Contractor or subcontractor firm name** (prime contractor on summary report submitted to agency) and **address** (including city name, state and zip code).
4. Contractor or subcontractor **Federal Employer Identification number** or payee identification number (prime contractor i.d. on summary report); **check** to indicate prime or subcontractor report.
5. **Contract Amount** is dollar amount based on terms of the contract.
6. **Contract number** is the agency assigned number given to the contract.
7. **Location of work** including county and zip code where work is performed.
8. **Contract start date** is month/day/year work on contract actually began.
9. Contractor's **estimate of the percentage of work completed** at the end of this reporting period.

JOB OR TRADE CATEGORIES: A field office staff category plus ten job categories are printed on the form. These are trades commonly used in construction. The categories are intended to be general in nature, and may include several occupational job titles. *IF trades other than those identified are required to perform work on the contract*, this work should be combined and reported in the "Other" category. Work level designations of foreman/supervisor (F), journeyworker (J), and apprentice/trainee (A) are included as separate entries for each standard job category; hours worked must be recorded opposite the appropriate work level for each.

TOTAL HOURS WORKED DURING REPORTING PERIOD: Record the total hours worked by all employees during the reporting period, regardless of ethnicity, under each job category in column (1) for males (M) and column (2) for females (F). In columns (3) thru (10) report the total hours worked by male and female *minority group members* of one of the following defined groups:

- ☐ **Black (not of Hispanic origin):** all persons having origins in any of the Black African racial groups;
- ☐ **Hispanic:** all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or either Indian or Hispanic origin, regardless of race;
- ☐ **Asian or Pacific Islander:** all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or Pacific Islands;
- ☐ **Native American or Alaskan Native:** all persons having origins in any of the original peoples of North America.

MINORITY % = sum of all minority group members (M and F) in job category divided by the total hours worked by all employees in that job category (column 1 + column 2).

FEMALE % = total hours worked by all female employees in the job category (column 2) divided by the total hours worked by all employees in that job category (column 1 + column 2).

TOTAL NUMBER OF EMPLOYEES: record the *total number of all persons employed* during the reporting period, regardless of ethnicity; report the numbers of male (M) and female (F) employees separately.

TOTAL NUMBER OF MINORITY EMPLOYEES: record the *total number of minority persons employed* during the reporting period; report the numbers of minority male (M) and minority female (F) employees separately.

GRAND TOTALS: column totals should be calculated for all job categories combined. Total minority and female percentages should be calculated as shown above, based on the column grand totals.

SUBMISSION: The **monthly** Work Force Employment Utilization Report is to be completed by both prime and subcontractors and **signed and dated** by an *authorized representative* before submission. This **Company Official's name, official title and telephone number** should be printed or typed where indicated on the bottom of the form.

The *prime contractor* shall complete a report for its own work force, **collect** reports completed by each subcontractor, and **prepare a summary report for the entire combined contract work force**. The reports shall include the total work hours for all employees in each work category for all payrolls completed in the monthly reporting period. The prime contractor shall submit the summary report to the contracting agency as required by Part 542 of Title 9 Subtitle N of the NYCRR pursuant to Article 15-A of the Executive Law.

APPENDIX H

TAX LAW REQUIREMENTS

New York State Tax Law Section 5-a became effective August 20, 2004 for all covered procurements initiated on or after January 1, 2005 and was subsequently amended effective April 26, 2006. It applies to contracts where (1) the total amount of contractor's sales delivered into New York State are in excess of \$300,000 for the four sales tax quarters immediately preceding the quarterly period in which the certification is made, and with respect to any contractors, subcontractors, or affiliates of contractors whose sales delivered into New York State exceeded \$300,000 for the four sales tax quarters immediately preceding the quarterly period in which the certification is made, and (2) the contracts or agreements with state agencies or public authorities for the sale of commodities or services have a value in excess of \$100,000. This law imposes upon contractors the obligation to certify, prior to the effective date of the contract, whether or not the contractor, its subcontractors, and affiliates of the contractors are required to register to collect state sales and compensating use tax. Where required to register, the contractor must also certify that it is, in fact, registered with the Department of Taxation and Finance (DTF).

Contractor certification forms and instructions for completing the forms can be found at the website noted below. Proposed contractors should complete and return the certification forms within two business days of request prior to any contract award. Failure to respond timely may render a proposed contractor non-responsive and non-responsible. Proposed contractors shall take the necessary steps to provide properly certified forms, within a timely manner to ensure compliance with the law. In addition, if the contractor fails to make the certification required by New York Tax Law Section 5-a, or if, during the term of the contract, the approving agency discovers that such certification was false when made, then such failure or false certification will be a material breach of the contract, and the contract may be subject to termination if the approving agency determines that such action is in the best interests of the State of New York.

IMPORTANT NOTICE

In the case of a contract in which the terms provide for renewal upon expiration of an initial or subsequent term, the contractor must submit a certification document to the Authority, by the day prior to the commencement date of the next succeeding term of the contract. All covered contracts awarded, amended, extended, renewed or assigned on or after April 26, 2006 require form ST-220-CA to be filed with the Authority which certifies that ST-220-TD has been filed with the DTF and is up to date.¹

Contractors may call the DTF at 1-800-698-2931 for any and all questions relating to Tax Law Section 5-a and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF website: <http://www.nystax.gov>

¹ All covered procurements initiated on or after January 1, 2005 and awarded prior to April 26, 2006 shall be governed by the former rules and procedures as described in <http://www.osc.state.ny.us/agencies/gbull/g222.htm>

**Contractor Certification to Covered Agency**

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-CA

(6/06)

For information, consult Publication 223, Questions and Answers Concerning Tax Law Section 5-a (see Need Help? on back).

Contractor name				For covered agency use only Contract number or description	
Contractor's principal place of business		City	State		
Contractor's mailing address (if different than above)					
Contractor's federal employer identification number (EIN)			Contractor's sales tax ID number (if different from contractor's EIN)		
Contractor's telephone number			Covered agency name		
Covered agency address				Covered agency telephone number	

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

☐ The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

☐ The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF _____ }
: _____ SS.:
COUNTY OF _____ }

On the ____ day of _____ in the year 20____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _____ he resides at _____, Town of _____, County of _____, State of _____; and further that:

[Mark an **X** in the appropriate box and complete the accompanying statement.]

- ☐ (If an individual): _____ he executed the foregoing instrument in his/her name and on his/her own behalf.
- ☐ (If a corporation): _____ he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _____ he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- ☐ (If a partnership): _____ he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _____ he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- ☐ (If a limited liability company): _____ he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _____ he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?



Internet access: www.nystax.gov
(for information, forms, and publications)



Fax-on-demand forms: 1 800 748-3676



Telephone assistance is available from
8:00 A.M. to 5:00 P.M. (eastern time),
Monday through Friday. 1 800 698-2931

To order forms and publications: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

APPENDIX I
NEW YORK POWER AUTHORITY (NYPA)
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION CRITICAL INFRASTRUCTURE PROTECTION (NERC CIP)
CYBER ACCESS AND / OR UNESCORTED PHYSICAL ACCESS TRAINING REQUIREMENTS

1.0 PURPOSE

To comply with NERC CIP annual Cyber Security Training Program requirements for Contractor¹ personnel (“Independent Contractors”) requiring authorized cyber access to NYPA Critical Cyber Assets and / or for Independent Contractors requiring authorized unescorted physical access to any NYPA facility or location.

2.0 APPLICABILITY

The Appendix I requirements shall apply to all Independent Contractors having or requiring cyber access to NYPA’s Critical Cyber Assets including remote access, and all Independent Contractors requesting or required to have unescorted physical access to any NYPA facility or location.

- The annual Appendix I training requirement is valid for one (1) year from date of completion subject to Section 3.0 below. Failure to comply shall result in denial of Cyber access and / or unescorted Physical access.

3.0 PROCEDURES

- 3.1 Once a Contract is awarded, but prior to the performance of any Contract services, Independent Contractors MUST attend and complete NYPA’s training on NERC CIP standards.
- 3.2 Independent Contractor training shall be administered by NYPA in a manner it deems appropriate which may include, but will not be limited to, online training.
- 3.3 NERC CIP training is required annually.
- 3.4 NERC CIP Training may last approximately one hour.
- 3.5 Each Independent Contractor MUST sign NYPA Form I-1 confirming completion of such NERC CIP training. Form I-1 can be signed electronically or manually.
 - 3.5.1 Completion of on-line training will be recorded electronically.
 - 3.5.2 Completion of off-line training administered by Site Security or authorized representative will require the Independent Contractor to manually sign Form I-1.
 - 3.5.3 Manually completed Forms I-1 shall be collected by Site Security and forwarded to the White Plains Office Designee.
- 3.6 The Contractor shall maintain and retain its own records of personnel who have completed the NYPA NERC CIP training.

¹The party bound by the terms of the contract with NYPA.

APPENDIX I – FORM I-1
NEW YORK POWER AUTHORITY NERC CIP
CRITICAL CYBER ASSETS
ACCESS / UNESCORTED PHYSICAL ACCESS TRAINING FOR
INDEPENDENT CONTRACTOR(S)
ACKNOWLEDGEMENT OF TRAINING

Date of Training: _____

NYPA Contract Number: _____

NYPA Point of Contact (POC) Person*: _____

I, _____ hereby acknowledge that I have
(Independent Contractor's Name - Printed)

attended and completed the New York Power Authority's (NYPA) Annual Training Program for Independent Contractors having authorized Cyber Access to Critical Cyber Assets or Independent Contractors having authorized Unescorted Physical access to NYPA facilities and locations in its entirety and fully understand my responsibilities and agree to adhere to protocols that enforce these requirements.

Independent Contractor Signature

Title

Company Name

Telephone

Date

* Key NYPA person responsible for the contract work

APPENDIX J

BIDDER/CONTRACTOR COMPLIANCE WITH STATE FINANCE LAW §§139-J AND 139-K PROVIDING FOR CERTAIN PROCUREMENT DISCLOSURES

I. Disclosure of Persons or Organizations

This bid document, and any resulting contract, is subject to the provisions of New York State Finance Law §§ 139-j and 139-k providing for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions.

The State Finance Law requires the Authority to obtain identifying information on every individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity that contacts the Authority where a reasonable person would infer that the communication was intended to influence the Authority procurement during the Restricted Period. The “Restricted Period” refers to the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from bidders intending to result in a procurement contract and ending with the final contract award. The Authority is also obligated to collect information on whether such person or organization has a financial interest in the procurement.

Thereafter, the State Finance Law also requires the Authority to obtain such identifying information on every person or organization subsequently retained, employed or designated by or on behalf of the contractor to attempt to influence the procurement process. A covered agency or authority shall ensure that a contractor informs such agency or authority of persons or organizations subsequently retained, employed or designated by or on behalf of the contractor before the agency or authority is contacted.

In order to comply with these requirements, the bidder/contractor shall provide the Authority, as part of its proposal, with the names, addresses and other

pertinent information as shown on the attached Form “J-1”, of all employees, outside firms, or other entities retained, employed, or designated by or on behalf of the contractor to attempt to influence the procurement process including, but not limited to, negotiation of any contract arising from the bid solicitation.

II. Bidder/Contractor Disclosure of Prior Non-Responsibility Determinations

The State Finance Law requires the Authority to make a determination of responsibility of the proposed awardee for a procurement contract. It also mandates consideration of whether a contractor has intentionally provided false or incomplete information under such provisions within the last five years, and whether a contractor has failed to timely disclose accurate and complete information or otherwise cooperate in the implementation of such provisions.

A failure to timely disclose such information shall be considered in the Authority’s determination of responsibility of the bidder/contractor.

In order to assess this information, bidder/contractor shall complete the attached form “J-2”.

III. Bidder/Contractor Certification of Compliance

The State Finance Law requires that every procurement contract subject to its provisions contain a certification that all information provided to the Authority, as required by this Appendix J, is complete, true and accurate.

A procurement contract may be terminated upon a finding that an awardee intentionally provided false or incomplete information to the Authority as required by this Appendix J.

Bidder/Contractor shall complete the attached Form “J-3”.

BIDDER/CONTRACTOR DISCLOSURE OF CONTACTS FORM

Procurement ID Number (RFP or Q No.): _____

Bidder/Contractor Name: _____

Address: _____ City: _____ State: _____ Zip Code: _____

Person submitting this form:

Name: _____

Title: _____ Telephone No.: _____

(A) Bidder/Contractor Personnel *(Include company officers, sales or marketing personnel, engineers, lawyers, insurance specialists and other personnel)*

	Name	Location	Title	Telephone No.	Financial Interest in the Procurement?
1.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
8.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
9.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
10.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No

BIDDER/CONTRACTOR DISCLOSURE OF CONTACTS FORM

Procurement ID Number (RFP or Q No.): _____

Bidder/Contractor Name: _____

Address: _____ **City:** _____ **State:** _____ **Zip Code:** _____

(B) Outside Person or Organization

	Name and Company	Address	Title	Telephone No.	Financial Interest in the Procurement?
1.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
8.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
9.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
10.	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No

Contractor Disclosure of Prior Non-Responsibility Determinations

Bidder/Contractor Name: _____

Address: _____ **City:** _____ **State:** _____ **Zip Code:** _____

Person submitting this form:

Name: _____

Title: _____ **Telephone No.:** _____

Has any covered agency or authority made a finding of non-responsibility regarding the Contractor in the last five years?

☐ No ☐ Yes

If yes, was the basis for the finding of the Contractor's non-responsibility due to the intentional provision of false or incomplete information required by New York Power Authority or another state agency regarding certain procurement disclosures?

☐ No ☐ Yes

Covered Agency or Authority: _____

Year of Finding on Non-Responsibility: _____

Basis of Finding of Non-Responsibility:

Contractor Certification of Compliance

Contractor certifies that all information provided to the Authority with respect to the Authority's updated procedures, consistent with New York State Finance Law §§ 139-j and 139-k, providing for certain disclosures is complete, true and accurate. Contractor affirms that it understands and agrees to comply with the practices of the Authority relative to permissible contacts as required by New York State Finance Law §§139-j(3) and 139-j(6)(b).

Bid/Contract Number _____

CONTRACTOR CERTIFICATION:

I certify that all information provided to the Authority with respect to the Authority's practices providing for certain disclosures is complete, true and accurate.

By (signature:) _____ Date: _____

Name (printed or typed:) _____

Title: _____

Contractor: _____

Address: _____

City: _____ State: _____ Zip Code: _____

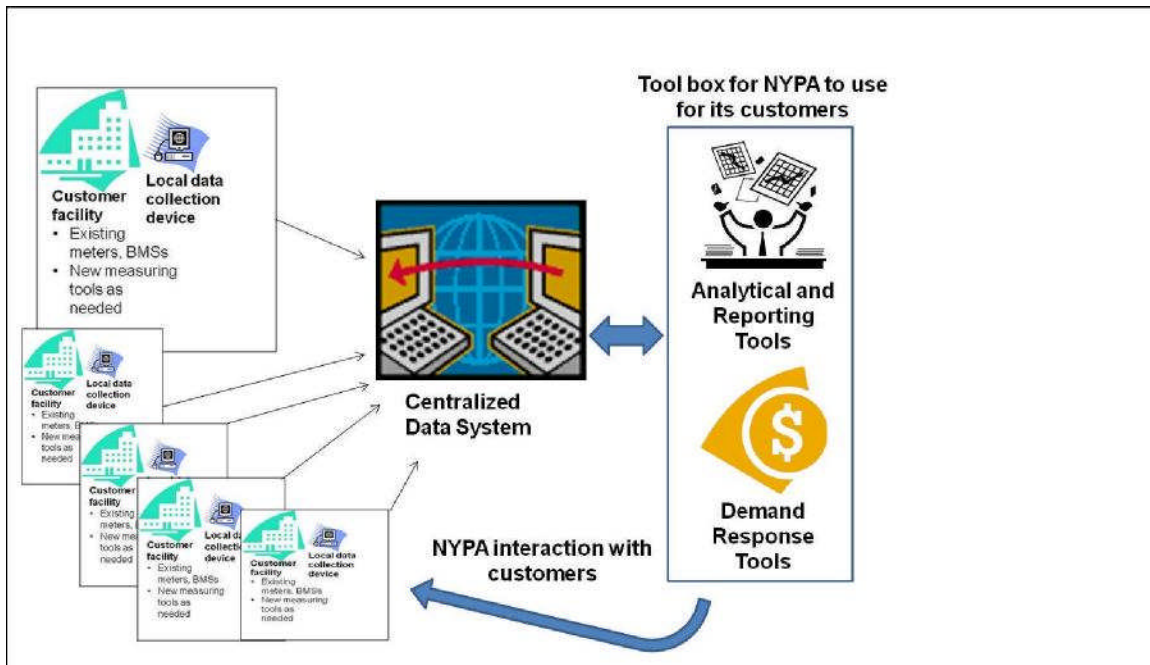
Schedule of Services
Energy Management Center
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1. New York Power Authority

NYPA is the nation's largest state-owned power organization, and is headquartered in White Plains, New York. NYPA is one of New York's leading electricity suppliers. The Authority provides low-cost power to government agencies; to municipally-owned and rural-cooperative electric systems; to job-producing companies and non-for-profit groups; to private utilities for resale – without profit – to their customers and to neighboring states under Federal requirements. The generating assets of the Authority are composed of 17 plants with total net dependable generation capacity approaching 5,500 megawatts, and over 1,400 circuit-miles of transmission lines. NYPA is also a national leader in promoting energy efficiency and the use of renewable-fuel and clean-energy technologies

2. EMC Application Requirements Overview

NYPA seeks to develop an EMC to monitor electricity and thermal energy used (including steam, hot water, and chilled water produced onsite) at its customers' facilities using 15 minute interval data. The EMC will be comprised of a centralized data system fed by local data collection devices at each participating customer site. Data from all energy measurement tools at each customer site will be aggregated by the local data collection devices, which will transmit the data regularly to the centralized data system. Analytical and reporting tools applied to the data in the centralized data system will enable NYPA to provide energy management services to participating customers. The centralized data system be hosted by the Vendor initially but may eventually be transferred to a NYPA facility.



2.2 Minimum capabilities of EMC

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2.2.1 Functional

The following list provides a summary of the minimum capabilities that the EMC should provide.

- Basic energy analysis
 - High/Low/Average/Median/Use by time period
 - Baselines – Establishing granular baselines for each facility to enable comparisons over time and across similar kinds of facilities, agencies, building types, and regions(a highly configurable system to ‘slice and dice’ data is sought)
 - Benchmarking (at a minimum, being able to export data to United States Environmental Protection Agency’s Portfolio Manager)
- Advanced analysis and/or tools
 - Data quality assurance
 - Weather normalization
 - Building equipment performance analysis – Anomaly detection
 - Power factor trending
 - Alarms/alerts/notifications for anomalous building performance
 - Monitoring & Verification support to assess energy consumption after Energy Efficiency Measures deployed
- Financial analysis
 - Rate assessment
 - Bill verification
 - New York Independent System Operator (NYISO) automated Day Ahead Market (DA)/Real Time Market (RTM) updates and alarms
- Support for Demand Response (DR)
 - Real-time data on participation
 - Communications with customers
 - Enable identification of new potential DR opportunities
- Access
 - Web-enabled with remote access options
 - Configurable dashboards for different user types (NYPA vs. customer, senior management vs. facility manager)
 - Provide connectivity to utility meters and BMSs – Open source protocols

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2.2.2 Information Technology Requirements

- **Application Delivery**

- Web-based – accessible by the authorized NYPA community and -customers at any time, and anywhere internet access is available.
- Web Based accessibility includes the application client and administration portals.
- Reports should be web based, viewable on standard desktop and mobile devices including, but not limited to, Apple iPhone and Apple iPad.

- **Central Data Repository – single database for adding, storing and sharing data assets**

- Ability to store large amounts of data
- Ability to provide capability to purge data
- Capability to search and find data assets quickly
- Capability to backup and archive data assets indefinitely without sacrificing data integrity or application performance.
- Data warehousing capability or the ability to provide an application programming interface (API) to SAP Business Warehouse or a SQLServer data warehouse.

- **Access Control**

- Secure access control enabling on-demand interactive access via the internet or an extranet.
- Rigorously authorized and authenticated users and applications.
- Ability to function behind NYPA's firewall
- Capability to easily administer permissions
- Ability to assign various levels of access and functional capability on a user by users basis, thereby, controlling who sees and does what with available data assets

- **Network Security:** Secure protocols such as HTTPS for web management interfaces, SSH for command line consoles, SNMPv3 for system management interfaces, syslog and SNMP traps for alerting, and RADIUS, access policies, and strong-form passwords for user authentication.

- **Audit and Disaster recovery** (for hosted solution) controls: Application must be SAS70, SOC 2 compliant.

- **Scalability:**

- Initially a small user base, but must be scalable to support a large number of users
- Must be able to support many concurrent users at any given time with little or no degradation in performance

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- Must be able to support multiple user locations across the entire State of New York

- **Data Base Requirements**

- Must be executable on either:
 - Windows SQL Server
 - Oracle 11i
 - MySQL

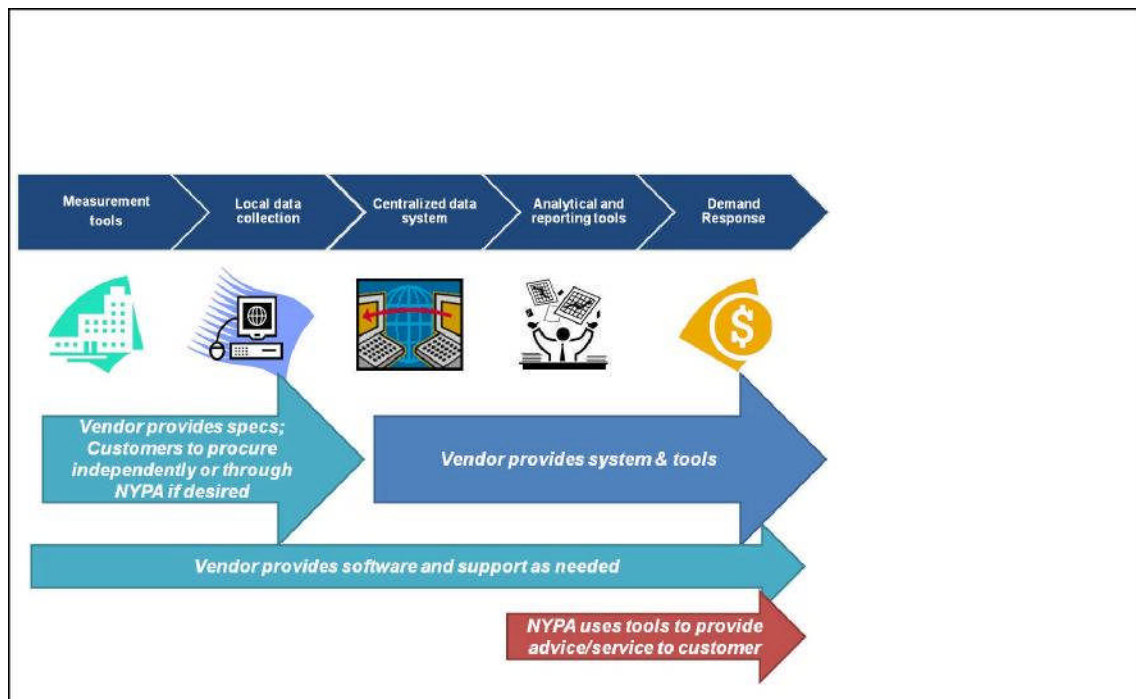
A proprietary or operationally encrypted data base platform is unacceptable.

- **Hosted Solution** must provide:

- - 24x7x365 technical support
 - - SAS 70 SOC 2 compliance

2.3 Role of Vendor in each segment of “EMC value chain”

Overview of how the Vendor and NYPA would divide the roles for the EMC - schematic provided below is structured using five main components of the “EMC value chain,” as defined by NYPA.



Measurement Tools:

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The Vendor's system will use existing customer hardware or software and interface with a broad array of measurement tools including but not limited to utility meters, submeters data loggers, and building management systems from a wide variety of vendors. The Vendor's role will be limited to providing NYPA with specifications for cost-effective electric and thermal meters that NYPA customers can use if desired on a going forward basis. This does not include the metering of NYPA customer sites.

Local data collection:

The system will use vendor neutral local data collection devices. The Vendor's role will include providing specifications for the local data collection device and providing and maintaining the software that those devices will use to connect with the centralized data system.

Centralized data system:

The Vendor will provide the centralized data system, including all maintenance on an ongoing basis. The centralized data system will collect and maintain all data from the local data collection devices. The centralized data system will be scalable and able to pull external data, such as weather or pricing points.

Analysis and reporting tools:

The Vendor will provide the software for the analytical and reporting functions outlined above, including all needed maintenance on an ongoing basis. Functionality of such software will include configurable dashboards and reports that can be customized by user profile.

The Vendor will provide the actual analysis of the data for the first 12 months. During those 12 months, the Vendor will establish and implement a robust training program to train designated NYPA staff on how to use the analytical and reporting tools. The objective will be for NYPA staff to take over analyzing the data on a day-to-day basis 12 months after the launch of the EMC.

Demand Response support:

NYPA already possesses several Demand Response programs. NYPA's goal is to improve its existing service and support to its customers and enable them to participate more easily and to a greater extent in these demand response programs. The Vendor will provide analytical tools to identify and quantify potential DR opportunities at monitored facilities. The Vendor's platform will

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provide dashboards and communication protocols to share information with participating customers in terms of event notification, event monitoring, post-event M&V based on event performance (real-time, 15 minutes at a minimum), and reporting and analysis on customer performance. Both NYPA and its participating customers will be able to access these dashboards. The ability of the Vendor's system to enable NYPA to submit requisite compliance documentation to the NYISO is required.

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COMPENSATION SCHEDULE

As full payment of services to be rendered by Consultant pursuant to the Agreement, the Authority will pay to Consultant the total of its Scheduled Rates and Out of Pocket Expenses as limited and described below:

I. SCHEDULE RATES

Vendors are to complete any or all of the three Pricing Schedules provided on pages 6 - 7, 8 - 9 and/or 10 - 11 of this section.

II. PERSONNEL RATES

Personnel Rates are hereby defined to be the sum of the products obtained from multiplying the appropriate Hourly Rate stated below by the number of hours that such personnel are actually engaged in work pursuant to this Agreement during the month in which the services were rendered.

Consultant shall not assign personnel with classifications other than those stated below without the express written approval of the Authority.

<u>Classification</u>	<u>** Fixed Hourly Rate</u>
*	\$ * _____

*** To be completed by Proposer.**

**** These rates will be firm for the duration of this Agreement.**

II. OUT-OF-POCKET EXPENSES

A. Travel Reimbursement Requirements

Subject to NYPA's prior approval, when Consultant is traveling on NYPA business on a cost reimbursable contract, NYPA will reimburse the Consultant for the actual and reasonable costs of necessary travel and lodging.

The Consultant is required to utilize NYPA's Travel Desk in order to be reimbursed for business travel expenses. The Consultant shall contact the NYPA's Travel Desk at Travel.Desk@nypa.gov or at 914-287-3191 to arrange for travel. When arranging for travel, the Consultant will be

Compensation Schedule
Energy Management Center

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requested to provide the traveler's profile which includes company name, passenger name and contact information along with the contract number and the name and approval of the NYPA's contact person.

This Profile is available to be downloaded on the nypa.gov website at <http://www.nypa.gov/doingbusiness/procurement/contractorprofile/default.htm>. The NYPA Travel Itinerary issued to the Consultant upon acknowledgment of travel arrangements, **must** be included with each invoice for travel expenses in order for the Consultant to be reimbursed.

NYPA's Travel Desk will arrange air, hotel and ground transportation services such as car rental services. For cost reimbursable contracts issued by the Authority's WPO office, in the event NYPA's Travel Desk is not used, the Consultant shall bear any additional costs above government rate as referenced on the GSA web site: <http://www.gsa.gov/portal/category/21287>.

The Consultant shall promptly advise NYPA's Travel Desk of any cancellations or changes in travel arrangements. Consultant will not be reimbursed for any avoidable cancellation/change charges, such as penalties on airfares and "no-show" charges for hotels and cars.

Air and train travel will be reimbursed based upon normal coach fare by the most direct route to and from the destination. Ground transportation such as rental cars will be reimbursed based upon an intermediate sized vehicle or smaller. Any rental car upgrade will not be reimbursed and will be deducted from the Consultant's travel expense invoice. Travel by private automobile will be reimbursed at then current rate established by the IRS for mileage reimbursement plus tolls and reasonable parking fees.

NYPA is exempt from New York State and local taxes on lodging and car rentals. Tax exempt forms must always be used to prevent state and local taxes from being added to hotel or car rental bills whenever Consultants are traveling in New York State. New York State and local taxes will not be reimbursed on any invoice for travel expenses.

MEAL ALLOWANCES:

\$55/day for Upstate New York (Albany, BG, CEC, Niagara, and STL)

\$70/day for downstate New York (White Plains and southeastern New York State).

No meal receipts are required to be submitted within the above thresholds.

Compensation Schedule
Energy Management Center

Inquiry No. Q13-5487FS

- B. Printing and reproduction, long distance communication, postage, and similar items actually incurred in performance of the Services.
- C. Computer Services shall be billed at the Consultant's standard rates prorated for the actual time such computer services are rendered pursuant to this agreement.

III. COMPENSATION LIMITATION

- A. Consultant is not authorized to proceed with and shall not be paid for any Services after an accumulation of the total compensation to be paid for the Services performed equals the Compensation Limitation, without the specific written direction of the Authority. The Authority shall be informed in writing when 80 % of the Compensation for Services authorized under the Agreement have been earned so that timely advance notice is given to allow consideration of whether the Consultant shall be authorized to perform any further services for Compensation in excess of such amount.
- B. The total Compensation Limitation shall not exceed
***. Any costs incurred beyond this amount without the written consent of the Authority will be to the Consultant's account.

***** To Be Determined.**

IV. INVOICING INSTRUCTIONS

- A. Invoices for compensation shall be submitted monthly for Services (Work) actually performed.
- B. Invoices shall be payable by the Authority in accordance with the provisions of its Prompt Payment Policy (Appendix "B" attached hereto). Invoices shall be subject to post-audit by the Authority and adjustment, if necessary. Such adjustment shall be applied against the invoices next received after the amount of the adjustment has been determined. Where time charges are a basis for compensation, no payment will be made by the Authority for time charges which cannot be supported by applicable time card information and/or other records relating to the actual time Contractor's personnel were engaged in providing the Services (Work). Invoices for reimbursable costs, if any, are required to be paid hereunder, shall be supported by relevant documentation.
- C. Payment for invoices submitted shall be rendered electronically unless payment by paper check is expressly authorized by the Authority upon documentation by the Contractor that acceptance of electronic payment from the Authority is not possible.

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- D. In order to be paid electronically, the Contractor is requested to provide on company letterhead, a responsible parties contact information, signed by a financial official within ten (10) days of execution of this Contract, **Automated Clearing House (ACH) Bank Instructions**, which must include the following:

- Bank Name: _____ *
- Bank ABA No.: _____ *
- Bank Account No.: _____ *

- E. In order to provide payment information, the following Accounts Receivable information is also requested:

- Contact person's name: _____ *
- Phone number: _____ *
- E-mail: _____ *
- Fax number: _____ *

- F. Send the written requested information directly to the attention of:

NYPA Procurement Rep.: (Buyer To Insert Name)

Email: _____

Fax: _____

Note: It is very important to provide NYPA the **ACH Bank Instructions**, **not** Wire Transfer Bank Instructions).

- G. The original and two (2) copies of all invoices shall be submitted to the Authority's "Designated Payment Office" at the following address:

New York Power Authority
P. O. Box 437
White Plains, NY 10602-0437
Attn: Accounts Payable

All invoices shall reference Agreement No. _____ *******_____.

- H. A "Proper Invoice" under the terms of this Agreement shall include all of the above required information.
- I. The Authority shall have no liability to the Contractor under Section 2880 of the Public Authorities Law in the event the Contractor shall fail to provide a Proper Invoice to the Authority's Designated Payment Office.

*** To be completed by Successful Proposer.**

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***** To be determined.**

V. **NO OTHER PAYMENT**

The Consultant will not be paid any monies or reimbursed any expenses, whether for costs, overheads, fees or profits, except as expressly set forth in the preceding paragraphs of this Compensation Schedule. The amounts therein set forth shall be the Consultant's sole and exclusive compensation for performing the Services.

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FIXED PRICE SCHEDULE

Description					
				5 Year Total Fixed Price On NYPA Premises	5 year Total Fixed Price Vendor Hosted
Fixed Price to deliver the Services and Materials described in this RFP.				\$	
The price for each of the following which is included within the Total Fixed Price:					
Project Deliverables					
	Price for each deliverable (module).	Unit Price			
	<ul style="list-style-type: none"> Identify module Identify module Identify module 	\$ \$ \$			
Other Software and Licensing					
			Annual Fixed Price		
			\$		
Annual Software and Licensing Costs for each year over five years			\$		
Other (Please specify)			\$		
Training					
<i>If Training is identified as a separate phase and not included as a deliverable in the construction or implementation phase, the following wording may be used:</i>			\$		
	<ul style="list-style-type: none"> Total Training Price 				
	Price for each of the following items included in the total training price	Fixed Price per Item			
	<ul style="list-style-type: none"> Price per class or individual 	\$			
Travel & Living Expenses (Implementation & Training)					

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	Total anticipated expenses using NYPA per diem rate.				
	Travel and Living Expenses		\$		
	Additional Costs				
	<ul style="list-style-type: none"> One-time or non-recurring costs (Identify other Costs) 		\$		
	Additional Consulting Services				
	Please provide breakdown of hourly/daily or weekly rate.				
	<ul style="list-style-type: none"> Consulting services to support implementation and post implementation phases 		\$		
	Annual Maintenance				
	If applicable, provide levels of service and respective cost. For total "fixed" cost assume lowest service level.				
	<ul style="list-style-type: none"> Annual Maintenance Cost 		\$		

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PER METER SCHEDULE

Description				
<u>FOR TOTAL “PER METER” PRICE ASSUME INITIAL IMPLEMENTATION WILL BE FOR 100 METERS</u>				5 Year Total “Per Meter” Price Housed @ NYPA
Price to deliver the Services and Materials described in this RFP.				5 Year Total “Per Meter” Price Hosted by Vendor
Project Deliverables				
	Price for per customer meter:	Unit Price		
	• 1 – 49 Meter Rate			
	• 50 – 100 Meter Rate			
	• 100- 500 Meter Rate			
	• 500 - 1000			
		\$		
		\$		
		\$		
		\$		
		\$		
Other Software and Licensing				
			Annual Per Meter Price	
			\$	
Annual Software and Licensing Costs for each year over five years			\$	
Other (Please specify)			\$	
Training				

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	<ul style="list-style-type: none"> Total Training Price 		\$		
	Price for each of the following items included in the total training price <ul style="list-style-type: none"> <i>Price per class or individual</i> 	Fixed Price per Item			
		\$			
	Travel & Living Expenses (Implementation & Training)				
	Total anticipated expenses using NYPA per diem rate.				
	Travel and Living Expenses		\$		
	Additional Costs				
	<ul style="list-style-type: none"> One-time or non-recurring costs (Identify other Costs) 		\$		
	Additional Consulting Services				
	Please provide breakdown of hourly/daily or weekly rate.				
	<ul style="list-style-type: none"> Consulting services to support implementation and post implementation phases 		\$		
	Annual Maintenance				
	If applicable, provide levels of service and respective cost. For total "per meter" cost assume lowest service level.				
	<ul style="list-style-type: none"> Annual Maintenance Cost 		\$		

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PER (CONCURRENT) USER SCHEDULE

Description					
<u>FOR TOTAL "PER USER" PRICE PURPOSES, ASSUME INITIAL IMPLEMENTATION WILL BE FOR 25 USERS</u>				5 Year Total "Per User" Price on NYPA Premises	5 Year Total "Per User" Price Vendor Hosted
Price to deliver the Services and Materials described in this RFP.				\$	
Project Deliverables					
	Price per Unit				
Price for per customer user: <ul style="list-style-type: none"> 1 – 10 concurrent users 10 – 25 concurrent users 25- 50 concurrent users 50 – 100 concurrent users 100 -500 concurrent users 		\$ \$ \$ \$ \$ \$ \$ \$			
Other Software and Licensing					
			Annual Fixed Price		
			\$		
Annual Software and Licensing Costs for each year over five years			\$		
Other (Please specify)			\$		
Training					

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	<ul style="list-style-type: none"> Total Training Price 		\$		
	Price for each of the following items included in the total training price <ul style="list-style-type: none"> <i>Price per class or individual</i> 	\$			
	Travel & Living Expenses (Implementation & Training)				
	Total anticipated expenses using NYPA per diem rate.				
	Travel and Living Expenses		\$		
	Additional Costs				
	<ul style="list-style-type: none"> One-time or non-recurring costs (Identify other Costs) 		\$		
	Additional Consulting Services				
	Please provide breakdown of hourly/daily or weekly rate.				
	<ul style="list-style-type: none"> Consulting services to support implementation and post implementation phases 		\$		
	Annual Maintenance				
	If applicable, provide levels of service and respective cost. For total "per User" cost assume lowest service level.				
	<ul style="list-style-type: none"> Annual Maintenance Cost 		\$		

Certificate of Insurance



This is to certify that the policies of insurance listed in this Certificate have been issued to the Named Insured and are in force and effect as of the date of this Certificate.

NYPA Contract # (To be Advised)	Description of Operations
Named Insured <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Sub Contractor	Address

Certificate Holder: **New York Power Authority**
123 Main Street
White Plains, New York 10601
Attn: Fiona Spencer

Type of Insurance	Insurance Co./ Policy #	Effective Date	Expiration Date	Limits per occurrence (thousands)	Deductible per occurrence (thousands)
General Liability _Comprehensive Form _Occurrence Form _Claims Made Form _Contractual Coverage _Products/Compl. Ops.				BI PD CSL	
Auto Liability _Any Auto _All Owned Autos _Scheduled Autos _Hired Autos _Non-Owned Autos				BI PD CSL	
Excess Liability _Umbrella Form _Other than Umbrella Form					
Other					

The issuer verifies that: 1) The New York Power Authority and the State of New York and its customers have been named as additional insureds on the policies specified excluding Workers' Compensation, Employer's Liability and Auto Liability, with respect to all operations, activities, work, services, items or performance relating to the contract indicated on this form; 2) The specified insurance policies have been endorsed to a) be primary to any and all other insurance coverage; b) contain cross liability coverage; and c) provide that the insurer has no right of recovery or subrogation against the Authority or the State of New York.

Date Issued	Name of Issuer	Title
Company		Address
Signature of Authorized Representative		